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No. 2528

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.

(IN FOUR VOLUMES.)

JOHN A. JESSON, E. R. PEOPLES, JAMES W. HILL, RAY BRUMBAUGH, R. C. WOOD and JOHN L. McGINN,

Appellants,

vs.

F. G. NOYES, as Receiver of the WASHINGTON-ALASKA BANK, a Corporation, Organized Under the Laws of the State of Nevada,

Appellee.

VOLUME IV.

(Pages 961 to 1239, Inclusive.)

Upon Appeal from the United States District Court for the Territory of Alaska, Fourth Division.

Filed
AUG 19 1915
F. D. Monckton,
Clerk.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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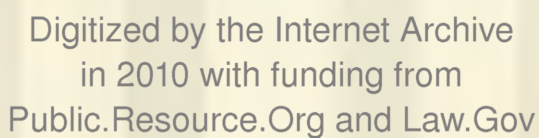
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(Deposition of T. F. Ryan.)

Q. Now if things had continued in Mexico as they were in 1910 and 1911, and they had peace, what in your opinion would have been the value of that property today?

Mr. RIDER.—I object to that as irrelevant, immaterial and incompetent, and as purely speculative and based upon a condition which does not exist.

A. The management figured on four thousand acres of bananas there, and there is no question in my mind but what they would have planted them, in fact we would have planted them ourselves for them and taken the lease if conditions had been such that we could, under the Republic of Mexico. I would say four thousand acres of bananas would [856] be worth three hundred dollars an acre, conservatively. That is my business, growing bananas. Outside of that he would have the balance of his land left, which ought to have materially advanced in value with the development of the plantations. I thing that that land would be conservatively worth a million and a half dollars to-day if the development had been allowed to go on as it started, without the interference of the insurrections.

Q. I will ask you to state whether or not you can fix a value upon the property at the present time?

A. No.

Q. Why not?

A. The condition of the country is such that you cannot fix anything—that would be too speculative to do.

Q. In other words, there is no market for any

(Deposition of T. F. Ryan.)

property down there? A. No.

Q. At the present time, owing to the rebellion and the insurrection—

A. There is nothing safe except what is tied down so that it cannot be pulled up and taken away.

Q. I will ask you to state, if you can, if you were the owner of that property at the present time, what is the least which you would take for it under existing conditions?

Mr. RIDER.—I object to that as irrelevant, immaterial, incompetent and not the proper basis of value.

A. That is a hard question to answer. I probably would be a sport and hold it and not sell it at all. If I owned the property and had to sell it it would probably be [857] worth—I doubt if I could get $75,000 for it.

Q. (Mr. McGINN.) Don't you think, as a matter of fact, that the land itself is worth more than that?

A. The land is worth just as much as it ever was—the value of the land has not been depreciated by these troubles—the land is all there, and if peace ever comes to that country why the land would gradually become worth more money as the Pacific Coast develops, because it is the closest possible point on the Pacific Coast that will produce tropical fruits. You have to go well down to 20 before you can grow tropical fruits, and that is practically on the border.

Q. Are you acquainted with the value of banana land in that country? A. I am.

Q. And you were during the years 1910, 1911?

(Deposition of T. F. Ryan.)

A. Yes,

Q. And you state that while you were not upon this particular land yourself, you have holdings within eighteen miles of it? A. Yes.

Q. You have been there yourself?

A. I have been to San Blas on our own plantation.

Q. I will ask you to examine this document which is marked "Report," and addressed to Mr. F. G. Noyes, receiver, and dated December 26, 1911, which I will ask to be marked as Defendants' Exhibit No. 4 for identification, and I will ask you to state whether that report conforms to the report which was made to you concerning this property. [858]

Mr. RIDER.—That is objected to as irrelevant and immaterial and calling for a conclusion of the witness and as incompetent.

Mr. McGINN.—I mean, that is as to the general nature of the land.

Mr. RIDER.—Is that a copy of the Wells report?

Mr. McGINN.—Yes.

The WITNESS.—(Examining document.) I do not see but what his description is reasonably clear on that.

Q. Do you know how much Captain Barnette paid for property? A. I do not.

Cross-examination.

Q. (Mr. RIDER.) Mr. Ryan, are you one of the parties who at one time held an option on this property. A. No.

Q. Did you ever at any time have an interest in this property?

(Deposition of T. F. Ryan.)

A. Only in the last few months before Captain Barnette asked me to see if we could use some of this fruit up there and if so he wanted to see what we could do in the way of marketing it. I sent a manager from San Francisco down to examine the plantations and I found a great many of them had been washed out. I did spend about three thousand dollars, however, in putting the plantations in shape to take the bananas out and said something about—well, the time was too short and he could not give me any definite answer on the proposition as to what he could do—it seems to me it was December 14.

Q. You refer to the taking of the product off the plantation? [859]

A. To the taking of the product off the plantation.

Q. And that is the extent of your interest in it?

A. That is the extent of my interest in it.

Q. You never had any interest in the plantation itself? A. No interest at all.

Q. And you have no interest at this time?

A. No interest at this time; in fact we had to abandon what we spent there because we could not get the fruit out.

Q. On account of the insurrection?

A. On account of the insurrection.

Q. And you say you have never been on this ranch yourself?

A. No. I have my southern manager and he looks after all that.

Q. I am asking you about your own personal acquaintance with it. A. No, sir.

(Deposition of T. F. Ryan.)

Q. And your own property is eighteen miles from this property. A. Approximately.

Q. That is the nearest you have ever been to the Barnette property? A. I have been at San Blas.

Q. And how near is that?

A. I should say about fifteen miles, I can't say positively as to that.

Q. Your entire information then respecting the condition and character of this property is based upon reports made to you by your managers?

A. By my tropical manager who reports to me on all our land, [860] and I buy on his reports in preference to my own judgment.

Q. Is he in this city now? A. No.

Q. Where is he now?

A. One of them is in San Francisco and the other is at the plantation now managing it.

Q. Now, were you acquainted with the condition of this property in 1910 and 1911? A. Yes, sir.

Q. Did you have it examined at that time?

A. Well, my manager examined that property and reported it to me.

Q. In 1910 and 1911?

A. Well, it was 1909 or 1910.

Q. 1909 or 1910?

A. Yes, sir, and he wanted at that time to interest me in the property.

Q. Now, at that time there was a state or a condition of peace in Mexico.

A. Peace in Mexico.

Q. When did the insurrection start, the Madero in-

(Deposition of T. F. Ryan.)

surrection, do you remember?

A. I don't remember, that is a matter of public record, however, some time in 1911, I think.

Q. This property is covered by a tropical growth of vegetation, is it not?

A. What has not been cleared by Captain Barnette, or that was cleared at the time.

Q. Do you know whether or not any of that that was cleared at the time Captain Barnette became interested in it, or [861] was subsequently cleared by him, has returned to its original state?

A. There is a light growth of underbrush that will come up in three months down there.

Q. Yes.

A. I know they have kept it down, and the banana plantations were reset personally at my own expense, all of the plantations; it was in the condition that this gentleman said—the stock was turned in there, and we straightened it up and reset it into bananas.

Q. By "this gentlemen," do you mean Mr. Wells?

A. Yes. We replenished it and put the banana plantation back in shape.

Q. How many acres are there in the banana plantation?

A. I don't believe there is over 250 acres now, because some of it was low and was badly grown up with undergrowth and it was cheaper to set out a new plantation.

Q. What is the nature of that undergrowth which grew up there?

(Deposition of T. F. Ryan.)

A. Everything that ever grew there in the first place.

Q. Tongos, choke-vines, trees and shrubs.

A. Yes—you might cut a tree down there and it shoots right up again.

Q. And how large are some of those trees?

A. It is a light growth, most of them is under-growth, just light.

Q. And what does it cost to clear it up?

A. Well, it would be only a guess? I imagine the original cost would probably be ten or twelve dollars an acre.

Q. Gold? [862]

A. Gold, but maybe more if it was heavy timber; the second growth would not cost so much, perhaps half of it or maybe less. It grows right back again in three months; you have to keep it down all the time.

Q. Do you know whether there is anybody in charge of this plantation keeping it up now or not?

A. There has not been in the last few months, because they have been driven off by the insurrectos; in fact they have taken possession of it.

Q. The insurrectos have taken possession of the property? A. Taken possession of it.

Q. Claiming a forfeiture of it?

A. I have one report from down there that it was not the insurrectos—that it was a bunch of bandits that took possession. Owing to the squabble between the federalists and the constitutionalists they were unable to police the country and the bandits took ad-

(Deposition of T. F. Ryan.)

vantage of it and they started to kill the sheep on the place and to kill the cattle and steal them and in fact my manager reported to me at one time,—he said it took wings; and that when he wanted a receipt from those fellows for any cattle they had taken off the place, they sent word back to him that if they sent word any more to them again like that they need not expect to see the messenger any more.

Q. And those insurrectos are in possession of that place now?

A. Practically in possession of the place now as I understand it from my last report.

Q. Do you know whether those parties who are in possession of this ranch are operating with either the federalists [863] or the constitutionalists?

A. I understand not with either one.

Q. That they are acting independently?

A. Although recently the insurrectos were the ones that were causing the trouble, the constitutionalists came in and they seemed to enjoy the same privilege that the other fellows did—they helped themselves to the saddle horses and the stock.

Q. And on account of that condition you say that this property has practically no market value at all at this time?

A. Well, I don't know that anybody would even want to go in there and stay.

Q. You don't think anyone would want even to risk a dollar or want to risk their lives to go down there and look at it right now? A. I do not.

Q. Did your investigation which you conducted

(Deposition of T. F. Ryan.)

through your agents and managers, advise you as to the condition of the buildings on these premises?

A. Yes.

Q. They reported them in a state of decay?

A. I don't understand it so. I thought the buildings were all in good condition.

Q. Did they report any of them as being incomplete?

A. I have got that report in my office and I cannot call it to memory.

Q. You know yourself nothing about the condition then of those buildings that were on there?

A. No, I do not. [864]

Q. Or the improvements in general that were put on.

A. The improvements were all very, very substantial and good.

Q. Do you know whether or not those improvements which were originally contemplated were completed or not?

A. I think they were; I think there was in the neighborhood of $150,000 spent on the plantation in one way and another, if not $200,000.

Q. It might be spent there, but you do not know whether they completed the improvements or not.

A. They completed the buildings.

Q. Do you know whether they completed the lighting plant or not?

A. I think the electric light plant was completed.

Q. Your information is that it was completed?

A. Yes. The ice plant was not. There was an ice

(Deposition of T. F. Ryan.)

plant down there that was not set up.

Q. Was your information sufficient to enable you to advise yourself as to what became of the machinery which was imported there? A. It is there.

Q. In what condition—I mean just the general condition, I do not care for it specifically?

A. I think I have got the facts here (refers to document). It is in fair condition as it could be under the circumstances of being subject to the tropical rains and so forth. Of course there is a world of lumber there.

Q. That machinery is allowed to stand out in the open?

A. It is covered, most of it, and cared for.

Q. It is rusty and depreciated in value, is it not?

A. No more so up until just recently until the insurrectos [865] have got there, the property has been reasonably well cared for.

Q. Do you know whether they have destroyed any of the machinery?

A. I understand they have taken practically everything, up to the barbed-wire fences—anything that has any value.

Q. Anything that is movable on the ranch is taken off?

A. A great deal of it; that is my understanding of it.

Q. And in order to restore that ranch, it would be necessary to restore all that machinery and stuff, wouldn't it?

A. Well, I cannot answer that, because they may

(Deposition of T. F. Ryan.)

have had machinery there which was—well, it depends on the nature of the development entirely. If a man wanted to grow one kind of product he might have one kind of machinery and if he wanted to grow another product he might require another kind of machinery, and it depends altogether on his development—what he could have to raise there.

Q. If he wants any machinery there he would have to put it in there—to put in a new supply of it entirely, wouldn't he?

A. The chances are he will after they get through with it down there. It is just problematical as to what they need. In September of this year there was eighty-six brood mares—if you want the list—

Q. I don't care for that.

A. I will show you—practically twelve or fourteen hundred head of stock on the place. This is taken from this gentleman's report. There is more stock on the premises than he found when he went down there.

Q. The report of your investigators, then, is different from [866] that of Mr. Wells.

A. My investigations were in the nature of an inventory.

Q. The report of your investigators is different, as to the property on the ranch, than that of the Wells report which you just examined, is it?

A. Yes; the Wells report, as I see it there, is an estimate, and mine is the actual inventory, except as to the cattle—those they could not round up and count unless it would take months.

(Deposition of T. F. Ryan.)

Q. Does your information advise you in any way as to the taking of cattle and stock generally on this ranch by the Mexican government in payment of its claims against the property for taxes? A. No.

Q. Or the taking of any of this property, or a claim of ownership upon it, by persons having claims against the ranch?

A. No. As I understand it the ranch has always had plenty of money to take care of all its obligations.

Q. That is your information?

A. That is my information. Not only that, but when we went down there in September there were no obligations against the place that I know of, and there was money enough on hand to take care of it. I understand Captain Barnette has kept money enough there to take care of all its obligations; that there was never a time that it lacked for money to take full and proper care of the place.

Q. Do you know of a claim being asserted against that property by the manager himself?

A. No. **[867]**

Q. You agents did not advise you respecting anything of that character? A. No.

Q. Now, you say that if peaceful conditions had obtained in Mexico from the time Captain Barnette acquired this property down to the present time, and the plans which you understand he had for the improvement of the property had been carried out, you think that property now would be worth a million and a half.

A. I think it would be conservatively worth a mil-

(Deposition of T. F. Ryan.)

lion and a half if he had carried out his plans in regard to the bananas alone, to say nothing about the rest.

Q. How much would it have cost him to carry out those plans—what investment would it have required?

A. A very comparatively small investment. His original investments made all the preparations so that the ranch would be practically developing itself with very little improvement from 1911 on. He laid the foundation for all of those improvements and they would have taken care of themselves, practically, and the banana plantation would have doubled six times in the last four years—the product from the plantations would have paid all the operating expenses and the improvements. If conditions had remained normal down there I see no reason why the management could not have developed and brought the property up to this stage of development with the expenditure of a very little more money, if any.

Redirect Examination.

Q. (Mr. McGINN.) How long were you at San Blas? [868]

A. I have been there on several occasions, anywhere from, I should say, four or five days to two or three weeks.

Q. I will ask you to state whether or not during the time that you were there you ascertained the values of plantation land within a radius of thirty or forty miles from San Blas?

(Deposition of T. F. Ryan.)

A. I did. I had two men on the coast for the greater portion of sixteen months and riding horseback clear down to Salinas Cruz.

Q. And you talked yourself with people at San Blas about the value of the property? A. Yes.

Q. And you feel you are acquainted, and were acquainted with the values of property around San Blas in 1910 and 1911?

A. Yes, I do, as well as anybody in that territory, and more, because I had examined it from a critical, practical standpoint to know what was there, while the average casual observer don't pay much attention to it.

Q. And you think you knew the value of this property in 1910 and 1911? A. I do.

(Deposition of witness closed.) **[869]**

[Defendants' Exhibit No. 3 for Identification, With Deposition of W. H. Parsons.]

STATEMENT W. A. BANK, Sept. 13, 1909.

Loans and Discounts	258,545.35
Overdrafts	12,977.89
Stocks and Securities	59,875.
Building & Real Estate	17,536.23
Furniture & Fixtures	5,245.31
Assay Outfit	2,505.25
" Expense	1,626.96
" Clipping	3,473.75
" Premium	2,317.15
Expense	49,881.64
Gold Dust	221,919.71
" Bullion	6,000.
F. A. Wing	1,367.47
Washington Trust Co	258,734.42

Wells Fargo Nev. Natl. Bank	760,033.43	
Bank of Manhattan Co.	2,630.47	
Natl. Bk. of Com. Tacoma	39,985.27	
Puget Sound Natl. Bk.	27,134.70	
Seattle Natl. Bk.	25,252.67	
Dexter Horton Co.	31,275.48	
Can. B. of Com. Seattle	342.21	
Scan. Amer. Bk.	327.95	
Can. Bk. of Com. Dawson	3,212.39	
Bk. of B. N. A. "	1,275.99	
Valdez Bk. & Mer. Co.	505.29	
Fairbanks Branch	4,106.80	
Fox "	2,013.71	
Cash	345,063.44	
Overs & Shorts	84.88	2,145,250.81

LIABILITIES:

Capital Stock	150,000.	
Und. Profits	6,248.37	
Circulation	94.	
Dividend Acct.	4,500.	
Assay Charges	74,451.07	
Exchange	10,182.25	
Telegrams	377.42	
Interest	27,174.53	
Due Depositors, Individual	1,150,406.43	
Savings	233,423.48	
Demand Certificate of Deposit	159,325.02	
Time " " "	94,167.29	
Cashier Checks	184.31	
Certified "	2,752.98	
Letters of Credit	8,900.	
Insurance	200.29	
Cleary Branch	65,037.92	
Dome "	157,825.45	2,145,250.81

Statement W. A. Bank, Sept. 13, 1909.

Defendants' Exhibit 3 for Indentification. N. W. Bolster, Notary. [870]

[Defendants' Exhibit No. 4 for Identification, With Deposition of T. F. Ryan.]

REPORT.

Hacienda Canada Del Tabaco, Santiago Ixcuintla, Tepic, Mexico.

Muskogee, Oklahoma,
December 26th, 1911.

Mr. F. G. Noyes, Receiver,
Washington-Alaska Bank,
Fairbanks, Alaska.

Dear Sir:—

In compliance with your instruction, I made a trip to Tepic, Mexico, to inspect the Hacienda Canada del Tabaco, being the property of Mr. E. T. Barnette, to which you hold a Deed of Trust as receiver of the Washington-Alaska Bank, Fairbanks, Alaska.

I left this city on the 22d day of November and returned on the 20th day of December. I experienced several delays on account of the political conditions of the country. I arrived at Guadalajara at 6 P. M. November 26th, and remained there until the evening of the 30th, on account of the activity of the insurrectors at Tepic, where the insurrectors were in control and liberated 500 government prisoners, who were reported to be carrying on lawless acts on the trail between San Marcos and Tepic, and on the recommendation of American residents at Guadalajara, I remained at that point as stated, to give the federal soldiers opportunity to reach Tepic and regain control, which they readily accomplished. I arrived at Tepic shortly after midnight December

1st, and early on the morning of the 2d I began an investigation of the title of the Canada del Tabaco properties and discovered that I would be unable to secure an abstract to the properties without a power of attorney, duly certified by the Governor of Alaska, and the Mexican consul at Seattle, whose signature must be duly verified by the authorities at Mexico City. In the absence of such authority I realized the necessity of developing the necessary influence to get in touch with the records and other necessary information, which I accomplished after considerable **[871]** delay. It was necessary to visit the two notary public offices at Tepic, and one notary public at Santiago Ixcuintla. I made a careful search of these records and am convinced that the title is clear and not subject to an attack, and it is so considered by all persons I met that are familiar with the properties, which opinion is concurred in by Attorney Antonia Garcia Esteves, who read the written opinion of Attorney Tomas Andrade, dated March 28th, 1908, and advised me he had personal knowledge of the title during the past 15 years and official knowledge of the title since his appointment as notary public, is a most important office in Mexico.

A certified copy of the abstract can be had as above indicated, at an approximate cost of $175.00 in gold. It is my judgment that there is not any necessity of getting such abstract of title. I am satisfied my search of the records were complete, and if an abstract was had, it would have to be submitted to a Mexican attorney for an opinion. You now have a copy of the opinion of Attorney Andrade and I had

a long conference with Attorney Antonia Garcia Estaves, who made a favorable report and it is my judgment and information that Andrade and Estaves are the leading attorneys of the territory of Tepic, and they have an excellent reputation among the Americans in that country. However, should you desire an abstract of the title, I will be pleased to serve you as you may suggest.

I left Tepic on the morning of December 7th and reached Canada del Tabaco on the 8th and remained there looking over the property until the afternoon of the 9th, and then returned to Tepic and telegraphed you a brief statement; copy of which I am unable to locate at present; however, I stated in the telegram that the title was good and that the properties were being mismanaged.

As a result of my trip to Mexico, I beg to submit the following detailed report of the E. T. Barnette properties: **[872]**

Name: Hacienda Canada Del Tabaco.

Location: On the right bank of the Santiago River, 15 miles from the postoffice at Santiago Ixcuintla, Territory of Tepic, Mexico.

Distance to nearest points: By wagon-road it is 15 miles to San Blas, a port on the Pacific Coast and 15 miles to Santiago Ixcuintla, a city of about 4,000 inhabitants, 30 miles from a small station on the Southern Pacific Ry. and 55 miles from Tepic, the capital of the Territory of Tepic, a city of something like 20,000 inhabitants. By river to San Blas the distance is estimated to be about 30 miles.

Santiago River: This river is navigable only for very small boats and the only boats used are "Dug Out" canoes, capable of carrying about 400 bushels of corn. It is claimed the river could be made navigable for larger craft at a nominal cost. The channel of the river is not dependable, it changing more or less every year during the rainy season, and to make this stream navigable would be a project too great for a private enterprise of the nature of the investment in the Canada del Tabaco.

Total Area: 18,723 acres.

Topography: Flat with very little undulation; but sufficient to furnish ideal drainage.

Climate: Tropical, with usual coast variations. Heat oppressive in summer, nights cool. Temperature ranges from 60° to 100° Fahr. Rainy season late June to October 1st.

Drainage: During the rainy season months of June, July and August the majority of the land overflows and leaves a fertile deposit. There is not any washing of the soil and the only standing water after the rainy season is in the old river bed, and most of the old river-bed can be cultivated during the dry season.

Soil: The most of the estate is a rich loam soil of good depth.

Water: Abundant all over the estate at a shallow depth. The great majority of the estate is sub-irrigated.

General Vegetation: Densely tropical, but easily cleared.

Timber: There is sufficient red cedar and hardwood to meet all the requirements of the estate.

Fruits: Since the purchase of this estate by Mr. Barnette, about four hundred acres have been set out to bananas; it is estimated that they produce 7,000 bunches per month, but owing to a lack of transportation their product is absolutely valueless. They are not cultivated or given any care. The rank undergrowth will soon be in control; [873] a vine known as the Choke Vine, very similar to our Morning Glory, but much larger, has many of the banana trees well wound in its control and will soon destroy the trees. Cattle have been turned in to feed on the bananas and many are carried away by the peons in canoes. The only accessible market is at Santiago Ixcuintla, and their total consumption not be worthy of consideration.

Products Marketed: The only products marketed are corn and cattle. The corn finds a ready market in a small way at Santiago Ixcuintla. Some of it is loaded in canoes and taken to San Blas, but the expense of transportation by canoe makes such sales unprofitable. Beef cattle find a ready market at Santiago *E*xcuintla, San Blas and Tepic, and are being marketed to meet current expenses.

Livestock: I am advised by persons in a position to know that there are about 400 head of beef cattle on the place; this could only be verified by a round-up, which I was not in a position to order, but judging from the number I saw grazing I am

of the opinion that 400 could be rounded up. They have a market value of $10.00 gold per head. At the time Mr. Barnette purchased the estate there was about 900 head of beef cattle; since then approximately 500 head have been sold to meet expenses and unless the revenues are increased and the place made self supporting, another 18 months will find the estate without beef cattle. There are 50 head of work-ox, valued at $20.00 gold per head; 60 head of work mules, undersized, valued $37.50 gold per head; 60 head Spanish brood mares, small, value $10.00 gold per head; 40 head saddle horses, valued $30.00 gold per head. A few hogs sufficient only for table supply.

As previously stated, I did not have the advantage of rounding up this stock, and owing to the recent death of Mr. Williams, the ranch foreman, I could not get the authority to make such round-up, as to the number of head of stock on hand; I had to depend on statements of the employees, which I had fairly well verified by an American at Santiago Ixcuintla, who is familiar with this estate, and I might add that it is the opinion of the Americans in that country that cattle have been sold to meet personal obligations and investments that have no connection with the Canada del Tabaco estate. I could not run this feature of the estate's previous management down, but I have a letter advising me of this condition of affairs since my return, and am informed that items showing transactions will

be forthcoming, which I will furnish you soon as the information reaches me in a tangible form.

Cultivated Lands: The very great majority of this estate is subject to cultivation, and can be placed in a good state of cultivation at a very nominal cost, on account of the cheap labor. There is about 4,500 acres of land that has been in cultivation, part of it laid out last year is well covered with a heavy tropical undergrowth, and it will all be in the same condition with the exception of 2,000 acres which have been rented at $1.00 gold per acre, rent collected **[874]** and applied on the back salary of Mr. Williams, the ranch manager recently deceased. Hence, the gross income of the estate for the present year is $2,000 gold, and that amount has been applied on back salary.

Pasture Lands: There is very little land that could legitimately come under this heading as commonly understood, about all of the land is as previously stated, subject to cultivation, but when not in cultivation the grasses are very prolific and it is superior to any grass land I have ever seen. I do not believe it can be excelled and can only be equalled in the tropics.

Industrial Implements: There are very few industrial implements. The same implements are used to-day as were used centuries ago. They continue to plow with a stick, pulled by oxen with their yoke lashed to the horns with thongs. There are a few small American plows on the estate. I was unable to locate any modern im-

plements with the exception of a few small plows that were well worn.

Vehicles: Two 3¼ inch Bain wagons. One buckboard and a lot of antiquated bull and mule-carts, some with spoke-wheels, a few with solid or nearly solid timber wheels. I presume they must have some local value.

Harness and Saddles: Outside of a lot of plow harness, which is of very small value, there is a good set of harness for a five-mule team, and four or five ox saddles.

Vessels: There are two good gasoline launches. I would judge one of them to be about 16 feet over all and the other about double its length. The small one leaks badly and is partly submerged. Preparations are being made to pump it out and place it in proper repair. Instructions were recently received from G. Edgar Ward of Los Angeles to ascertain if these launches could be raffled away at Santiago *E*xcuintla. Mr. Ward directs the management of the estate from Los Angeles, California, by correspondence, and it seems that he has made all the investments, as everything was shipped to the port of San Blas in his name. I can see no possible use for these launches, and very much doubt Capt. Barnette's knowledge of this unnecessary investment as well as other "air-castle" investments that have been made by Mr. Ward.

Buildings: At the time this estate was purchased by Barnette, there was a one-story ranch-house. Since then a second story has been added. The

first story is constructed of masonry, and the second story of red cedar. It is substantial, commodious and ample for all requirements of the estate, which is equipped with electric lights, electric fans and telephones, and there are numerous thatched roof labor quarters close to the ranch-house that are habitable, but of little cash value. Three of them are constructed of lumber and have tile roofs. They are only box buildings about 16 feet square. **[875]**

A brick building with tile roof, size 30x40, has been constructed for use of a man employed to make brick on the estate for the improvements hereinafter mentioned.

North of the ranch-house elaborate plans have been made for an enclosure of a piece of land, about 200 feet square by a series of brick buildings 38 feet wide. When completed the buildings will have a total length of approximately 600 feet. About 60% of the buildings are completed, no work having been done on the buildings during the 18 months. On the east side of this enclosure is a one-story brick building, 38x200 feet, with corrugated galvanized iron roof divided into six rooms. The north room is filled with parts of ice making machinery and supplies, which cannot be installed on account of missing parts, said to be lost in transit. The second room is the tank-room, where the ice is to be made. Many of the parts, including the iron tank, are installed. The third room is used for the engine-room for the ice plant.

The ice plant has a daily capacity of one ton. The fourth room is the boiler, which furnishes power for the various departments. It is supplied with a 40 horse-power Titcomb boiler. The fifth room is used for the electric light plant, and is furnished with a Nagle high-speed 12 horse-power engine, Westinghouse Electric Generator 10 K. W. style No. 3156–7 C, and a four-circuit switchboard with the usual attachments and tools.

The sixth room is occupied by the blacksmith-shop, machine-ship, feed-mill and wood-working shop in the order named. The blacksmith-shop is furnished with hand and power blast. It has all modern equipment. The machine-shop has a modern 6-foot power lathe, with drilling machine, emery stones and various other attachments used in such a plant. The feed-mill is made up of a small corn-mill and corn-sheller, both operated by power, shafting and pulleys are installed in the entire length of this room.

The woodwork shop has small circular saws, wood lathes, buffing machines and machinery for making tongue and groove flooring. It seems to be capable of turning out large chairs, as a number are in the course of construction. The seventh room is used for a storage room for heavy hardware and lumber. The south side of the enclosure is closed in by the store-house, a brick building 38x140 feet, with tar paper and tile roof, a driveway going between this and the building on the east side. This building con-

tains about 1,800 bushels of corn, 10 miles telephone wire, 5 telephones, 300 sacks of cement, shipped from California over one year ago and now crystallized into rock and worthless, 3 steel windmills, 150 spools galvanized barb wire.

The west side is closed in its entire length by what they call their "Administration Building." It is cut into some 6 or 7 rooms with brick partitions. Rooms partially plastered, but without any roof. The north side is enclosed by brick wall, except the space for driveway. Pillars are partially completed on the interior in front of the Administration Building and the incomplete building on the north side, for the construction of a corridor. In the enclosure there is a cement cistern of 20,000 gallons capacity, and a large elevator water-tank. The framing material used for the roofs of the two completed buildings is California redwood, and just outside of the enclosure I estimate there is 30,000 feet of California redwood of various dimensions. All of this lumber, heavy machinery, cement, windmills and barb wire was shipped [876] from California to San Blas and transported from there by pack-saddle, carts and canoes. When carried by land the distance is 15 miles, by water 30 miles.

It is claimed these buildings represent an investment of $25,000 in gold. If they do, then there must have been an enormous leak.

The machinery investment is claimed to represent $11,000 gold. I can see where the origi-

nal cost of the machinery, import duties, ocean freight and cost of transportation from San Blas would make up such an amount, and now that it is on the ground and everything installed except the ice plant, which is awaiting the arrival of missing parts, the entire investment outside of the store-house adds but little to the commercial value of the property. In addition to the many investments mentioned, the long distance manager, Mr. G. Edgar Ward, of Los Angeles, California, had erected just north of the described brick enclosure, 120 peon houses, size 14x20 feet, and 110 of these houses have tile roof, and the roof extends out 8 feet of their length for porch shade. The remaining 10 houses have thatched roof and the walls are made from limbs and palm, all without floors, and none of them have ever been occupied.

At the east and west ends of the estate, there are small settlements of peon houses, which have heretofore been ample to care for the help when the 4,000 acres was all in cultivation. These great investments in buildings, machinery, lumber, the setting out of 400 acres in a banana orchard, a bulky product of the ranch without hope of transportation facilities, all stand comparatively without value, and a monument to the incapacity of its management under Mr. G. Edgar Ward.

I am informed that Mr. Barnette has never been on the place since he purchased it, and it is the opinion of those familiar with the management of the

property that Mr. Barnette is without information as to the true conditions of the property, and the manner in which his money has been invested, and after my investigation, I, too, believe he has been falsely advised by a visionary manager.

I understand all the help, including the man in personal charge of the estate, were admonished not to address any communications to any person other than G. Edgar Ward, who seems to have been sole dictator. I learn your Deed of Trust is given subject to a contract between Capt. Barnette and G. Edgar Ward and W. D. Begg, and is not to be of force and effect until November 18, 1914.

The present gross income of the estate is derived from the rent of 2,000 acres of cultivated land, amounting to $2,000.00 gold for [877] the coming year, and this amount has been used in payment of the back salary of one man. There is one white man in charge of the place since Mr. Williams' death, who has been on the pay-roll for a couple of years as a machinist. A number of peons are at work. Taxes falling due every 60 days, and these expenses are being met by the sale of beef cattle,—400 head remaining valued at $4,000 gold. As soon as the value of the cattle is exhausted, then the balance of the livestock must be sold to meet current expenses, and as I view matters, all of these chattels will be exhausted by the close of the coming year, and what the place runs behind in 1913 and 1914 will be chargeable to the real estate. The property waste will continue, unless it is more intelligently handled.

I understand that the only outstanding indebted-

ness is a claim of $1,500.00 gold that the administrator of the estate of George Williams, deceased, has for services of Mr. Williams, while in charge of the properties, all other claims, including taxes being paid, excepting such claims as Ward and Begg and others may have under the Ward and Begg contract.

There is not any demand for the land in Mexico, and I do not believe anyone there is in touch with prospective buyers. The local real estate dealers get into court whenever a sale is made, claiming their commission. I would, therefore, recommend against communicating with them as to the sale of this property.

Political conditions are improving rapidly, and it is my judgment that this property can be sold in California at a price greatly in advance of the price paid by Barnette. The Mormon Church of Salt Lake City, Utah, are anxious to get hold of large fertile estates, and have men down there looking for just such property. The Peoples Trust Company of New Westminster, B. C., has a representative there looking for similar propositions, and they would like to be advised as to the purchase price, if the property can be sold in the near future. [878]

I trust there are not any important items omitted in this report, and that it covers the ground, but should you desire additional information, I am at your command.

Enclosed you will please find newspaper showing political conditions as I found them at Tepic and vicinity. Also, a rough sketch of the map of Canada del Tabaco, from a recent survey, and a photo-

graph of ox team and cart, which will show you the prevailing mode of transportation.

Respectfully submitted,

——————.

Defendants' Exhibit 4 for Identification. N. W. Bolster, Notary. [879]

[Defendants' Exhibit No. 5 for Identification, With Deposition of M. W. Peterson.]

March 18, 1908.

Fairbanks Banking Co.,
Fairbanks, Alaska.

Gentlemen:—

We duly received your telegram of the 14th inst. as follows:—

> "Please advise by telegraph at the earliest possibility last reliable report of valuation Gold Bar property. What is the opinion of yourselves regarding property? Wood will explain what we mean by Gold Bar property."

On receipt of your telegram we immediately secured what information we could concerning the Gold Bar Lumber Co., including a statement made by that company dated Oct. 12/07. We later secured from Mr. Armstrong, Manager and Treasurer of the company, an itemized statement of Mar. 1st/08, together with a copy of the company's trial balance of that date.

We have made a careful examination of the statement, and taking it for granted that the figures in the statement are approximately correct, we have arrived at the conclusion that the company is in excel-

lent financial condition considering the present financial and business conditions prevailing throughout the country. After eliminating all resources with the exception of camp equipment, lumber and logs on hand, mill plant, cash, real estate, merchandise in store and accounts receivable, and with these above-mentioned resources conservatively reduced in amount, and estimating the timber of the company worth $300,000, we find that for the purpose of arriving at a basis on which a credit for the company could be figured, it has total resources of $450,000.00 against liabilities of $75,000.00 showing a net worth of $375,00.00. This, of course, is not the figure at which the property would be valued in the event of a sale, but is merely the valuation that we as Bankers would give the property were we considering a loan on it.

According to the statement furnished us by Mr. Armstrong, the gross resources of the company amount to $526,000.00, which we believe to be a conservative valuation as we are informed that a reasonable amount is charged off each year for depreciation. We have therefore telegraphed to you as follows:—

> "In reply to your telegram of Saturday, property is worth in our opinion $375,000.00 for a firm basis of credit. Believe it can be sold for more than $425,000.00. Opinion is based upon statement March 1st and independent investigation."

We do not know for what purpose our opinion on this property is wanted, but we have been as fair as

possible in making the above estimates, and trust that our opinion will be of some service.

Yours very truly,

Cashier.

Nov. 24, 1914.

Received the original of which this is a copy.

S. F. RATHBUN.

Defendants' Exhibit 5 for Identification. N. W. Bolster, Notary. **[880]**

[Defendants' Exhibit No. 6 for Identification, With Deposition of M. W. Peterson.]

All Agreements Contingent upon Strikes, Accidents, Car Shortage and other Causes of Delay Beyond Our Control. Quotations Subject to Change Without Notice.

E. T. Barnette,
President.

Carl M. Johanson,
Vice-President.

A. T. Armstrong,
Treasurer and Manager.

J. S. Mackenzie,
Secretary.

GOLD BAR LUMBER CO.

Manufacturers and Wholesalers of

FIR AND CEDAR LUMBER, LATH, SHINGLES, BRIDGE, RAILROAD TIMBERS AND CAR STOCK.

Mills at Gold Bar, Wash., on main line of Great Northern Railway.

General Offices:
433 Henry Building.

Telecode
Western Union Code.

Seattle, Washington, Oct. 13, 1913.

Mr. W. H. Parsons,
Seattle, Wash.

Dear Sir:—

Enclosed find the general report of operation at the

mill for September. While the profits show small, I think it is fairly good considering the present condition of the lumber market. The extension of our logging railroad has cost us considerable money the last two months, but it had to be done before the bad weather set in, in order to get the best results for the least money, but from now on, we will not have this drain on us and will be able to reduce our bank obligation still further—the present month, the 30th of September was our yearly date for closing books for the preceding year, and we charged off the bad accounts and depreciated some of the items in order to be within a reasonable figure of their actual worth. The depreciation was something like $40,000, and I enclose statement of resources and liabilities after the depreciation has been made. The only item showing an undervaluation is the timber, which on the old cruise shows a little over 72 millions, but as our old cruise has over-run about 15% we undoubtedly have about 80 to 85 million feet of standing timber left.

Yours very truly,

CARL M. JOHANSON.

Oct. 29, 1913.

Defendants' Exhibit 6 for Identification. N. W. Bolster, Notary. [881]

[Defendants' Exhibit No. 7 for Identification, With Deposition of M. W. Peterson.]

GENERAL REPORT—GOLD BAR LUMBER COMPANY—SEPTEMBER, 1913.

Item	Detail	Amount	Debit	Credit
SAWMILL.				
Labor		$6929.61		
Mdse.		727.46	$7657.07	
Output	1877667′			
Hrs. run	201½			
Ave. per hr.	9318			
Cost per M.	$4.36			
SHINGLE-MILL.				
Labor		338.50		
Mdse.		1.69	340.19	
Output	593 M			
Cost	57¢			
LATH-MILL.				
Not operated.				
LOGGING CAMP.				
Labor		6879.15		
Mdse.		1400.19	8279.34	
Cost per M.	$4.07			
COOK HOUSE.				
Loss			72.57	
GENERAL.				
Salaries		800.00		
Fire Ins.		214.00		
Liability		401.50		
Taxes		330.00		
Interest		204.00		
Discount		334.13		
Gen. Expense		194.31		
Depreciation		1000.00	3477.94	
Total O/H charges @ 1.85				
Stumpage 2034418 @ 2.00			4068.84	
LUMBER SALES.				
Rail 56 cars	1105051′ @ $10.90			$12047.12
Shgls.	308500 @ 1.55			490.32
Local	95143′ @ 11.61			1103.79
" Shgls.	83000 @ 1.92			159.56
Wood, etc.				394.78
More lbr. cut than sold	772,616 @ 10.50			8112.47
More timber logged than sawed	156,751 @ 6.00			940.51
More shgls. cut than sold	84,500 @ .50			42.25
Underweights				1094.97
			$23895.95	$24385.77
GAIN			489.82	
			$24385.77	$24385.77

Item	Amount	Total
Rents	$ 69.00	
Water	240.00	
Lights	256.48	
		$565.48

[882]

GOLD BAR LUMBER CO.

SEPTEMBER 30, 1913.

RESOURCES AND LIABILITIES.

RESOURCES.		
Accounts Receivable	$ 18 271.85	
Cook House Supplies	1 500.10	
Camp Expense Supplies	1 978.09	
Camp Equipment	42 000.00	
Unexpired Insurance	983.00	
Lands	2 240.72	
Lumber Inventory	26 906.80	
Mill Site	5 000.00	
Mill Buildings	39 133.31	
Mill Equipment	60 181.35	
Mill Expense Supplies	1 214.65	
Bank	3 373.58	
Office Furniture & Fixtures	892.16	
Real Estate	11 163.17	
Real Estate Contracts	7 284.23	
Supplies in Warehouse	688.24	
Timber	144 895.81	
Water System	6 000.00	
Valley Supply Co	14 482.80	
TOTAL RESOURCES		$ 388 189.86
LIABILITIES.		
Bills Payable	$ 35,000.00	
Wages Due	6 509.74	
Unpaid Taxes	1 254.00	
Hospital Fees	184.20	
Mackenzie J. S. Salary	300.00	
TOTAL LIABILITIES		$ 43 247.94
NET RESOURCES SEPTEMBER 30, 1913		$ 344 941.92

[883]

STATEMENT—GOLD BAR LUMBER CO.

ASSETS:		
Bills Receivable	350.00	
Camp Equipment	35 503.18	
Cash	620.71	
Cook House Supplies	149.95	
Camp Supplies	1 207.74	
Excess Freight Fund	592.86	
Horses and Wagons	283.06	
Unexpired Insurance on Mill	3 551.54	
" " on Real Estate	154.02	
Lands	3 290.57	
Lumber & Logs	52 600.33	
Mill Site	5 000.00	
Mill Bldgs.	27 507.94	
Mill Equipment	89 251.36	
Mill Supplies	965.57	
National Bank of Commerce	1 249.43	
Furniture & Fixtures	718.58	
Real Estate	23 550.00	
Valley Supply Co	12 051.99	
Water System	10 341.59	
Timber	271 032.73	
Accounts Receivable	20 878.87	560 852.02
TOTAL RESOURCES.		
LIABILITIES:		
Bills Payable	100 000.00	
Liability Insurance	839.40	
Accrued Interest	805.17	
Unpaid Taxes	1 000.08	
Accounts Payable	11 082.49	
Wages Due	8 370.27	122 097.41
TOTAL LIABILITIES		$438 754.61

Nov. 24, 1912.

Received the original of which this is a copy.

S. F. RATHBUN.

Defendants' Exhibit 7 for Identification. N. W. Bolster, Notary. [884]

[Defendants' Exhibit No. 8 for Identification, With Deposition of M. W. Peterson.]

GOLD BAR LUMBER CO.

STATEMENT OCTOBER 1st, 1910.

RESOURCES:		
Bills Receivable	350.00	
Camp Equipment	52 314.46	
Cash	441.60	
Cook House Supplies	293.50	
Camp Supplies	2 751.08	
Freight Deposit	75.00	
Horses & Wagons	133.06	
Insurance on Real Estate	234.89	
Insurance on Mill	2 856.23	
Lands	3 142.87	
Lumber & Logs	59 290.00	
Mill Site	5 000.00	
Mill Bldgs.	47 925.90	
Mill Equipment	74 604.78	
Mill Supplies	1 237.78	
National Bank of Commerce	7 514.98	
Furniture & Fixtures	1 143.98	
Petty Cash	15.59	
Real Estate	23 150.00	
Timber	230 389.95	
Valley Supply Co	10 539.03	
Water System	10 341.59	
Accounts Receivable	32 584.70	
TOTAL RESOURCES		566 330.97
LIABILITIES.		
Bills Payable	99 400.00	
Unpaid Taxes	1 177.71	
Unpaid Interest	910.33	
Wages Due	9 554.19	
Accounts Payable	5 817.33	
TOTAL LIABILITIES		116 859.56
NET RESOURCES		449 471.41

Nov. 24 1913.

Received the original of which this is a copy.

S. F. RATHBUN.

Defendants' Exhibit 8 for Identification. N. W. Bolster, Notary. [885]

[Defendants' Exhibit No. 9 for Identification, With Deposition of J. S. Mackenzie.]

STATEMENT OF GOLD BAR LUMBER CO.
OCTOBER 1, 1908.
RESOURCES.

Camp Equipment	31 915.23	
Excess Freight Fund	625.16	
Horses & Wagons	501.06	
Unexpired Ins. on Mill	2 026.68	
" " " Real Estate	128.78	
Lands	3 229.57	
Lumber and Logs	8 232.74	
Light Equipment	2 879.32	
Mill Site	5 000.00	
Mill Buildings	24 213.87	
Mill Equipment	73 594.81	
Northern Bank & Trust Co	6 519.20	
Office Furniture	548.58	
Timber	300 000.00	
Real Estate	24 500.00	
Valley Supply Co. Stock	9 593.39	
Water System	10 313.82	
Accounts Receivable	7 161.47	
Total Resources		510 983.68

LIABILITIES.

Bills Payable	71 000.00	
Unpaid Taxes	1 306.24	
Wages Due	149.99	
Accounts Payable	362.74	
Total Liabilities		72 818.97
Net Resources Oct. 1, 1908		438 164.71

Defendants' Exhibit 9. N. W. Bolster, Notary. [886]

[Defendants' Exhibit No. 10 for Identification, With Deposition of J. S. Mackenzie.]

STATEMENT.

GOLD BAR LUMBER CO.

ASSETS.

Bills Receivable	350.00	
Camp Equipment	35 503.18	
Cash	620.71	
Cook House Supplies	149.95	
Camp Supplies	1 207.74	
Excess Freight Fund	592.86	
Horses & Wagons	283.06	
Unexpired Insurance on Mill	3 551.54	
" " Real Estate	154.02	
Lands	3 290.57	
Lumber & Logs	52 600.33	
Mill Site	5 000.00	
Mill Buildings	27 507.94	
Mill Equipment	89 251.36	
Mill Supplies	965.57	
National Bank of Commerce	1 249.43	
Furniture & Fixtures	718.58	
Real Estate	23 550.00	
Valley Supply Co	12 051.99	
Water System	10 341.59	
Timber	271 032.73	
Accounts Receivable	20 878.87	
Total Resources		$560 852.02

LIABILITIES.

Bills Payable	100 000.00	
Liability Insurance	839.40	
Accrued Interest	805.17	
Unpaid Taxes	1 000.08	
Accounts Payable	11 082.49	
Wages Due	8 370.27	
Total Liabilities		122 097.41
Net Resources, Oct. 1st., 1909		$438 754.61

Defendants' Exhibit 10. N. W. Bolster. [887]

[Defendants' Exhibit No. 11 for Identification, With Deposition of J. S. Mackenzie.]

GOLD BAR LUMBER COMPANY.

STATEMENT OCTOBER 1ST., 1910.

RESOURCES.

Bills Receivable	350.00	
Camp Equipment	52 314.46	
Cash	441.60	
Cook House Supplies	293.50	
Camp Supplies	2 751.08	
Freight Deposit	75.00	
Horses & Wagons	133.06	
Insurance on Real Estate	234.89	
Insurance on Mill	2 856.23	
Lands	3 142.87	
Lumber & Logs	59 290.00	
Mill Site	5 000.00	
Mill Buildings	47 925.90	
Mill Equipment	74 604.78	
Mill Supplies	1 237.78	
National Bank of Commerce	7 514.98	
Furniture & Fixtures	1 143.98	
Petty Cash	15.59	
Real Estate	23 150.00	
Timber	230 389.95	
Valley Supply Co.	10 539.03	
Water System	10 341.59	
Accounts Receivable	32 584.70	
Total Resources		566 330.97

LIABILITIES.

Bills Payable	99 400.00	
Unpaid Taxes	1 177.71	
Unpaid Interest	910.33	
Wages Due	9 554.19	
Accounts Payable	5 817.33	
		116 859.56
Total Liabilities		
Net Resources		449 471.41

Defendants' Exhibit 11. N. W. Bolster, Notary. [888]

[Plaintiff's Exhibit "D" for Identification, With Deposition of J. S. Mackenzie.]

TIMBER CUT BY THE GOLD BAR LUMBER COMPANY.

YEARS 1908, 1909 AND 1910.

1908—None cut.

1909	January	1,025,369′	1910	446,421′
	February	1,300,613′		874,197′
	March	1,767,587′		1,759,789′
	April	1,716,663′		1,980,951′
	May	1,812,846′		2,469,473′
	June	2,111,573′		2,061,517′
	July	597,644′		1,987,691′
	August	1,208,210′		2,476,338′
	September	1,399,235′		2,399,583′
	October	1,214,593′		2,174,109′
	November	918,357′		2,398,778′
	December	989,180′		1,353,120′
		16,061,870′		21,881,967′

Plaintiff's Exhibit "D." N. W. Bolster, Notary. [889]

[Plaintiff's Exhibits "A" and "B" for Identification, With Deposition of M. W. Peterson.]

Copy of Letter in F. B. Co's file No. 30, Dexter Horton Co.

Seattle, Wash., August 31, 1908.

Fairbanks Banking Co.,
Fairbanks, Alaska.

Gentlemen:—

We have received your telegram of the 27th instant setting forth your requirements in the way of currency for the coming winter. We telegraphed you on the 29th as follows:—

"As an advance against shipment bullion in transit and to be shipped before navigation is closed as per your telegram twenty-seventh will ship two hundred fifty thousand dollars not later than September 5th. Will advise letter concerning Gold Bar Stock."

Since telegraphing you the above, we have received your favor of the 6th instant, going over your present situation quite fully. We are now preparing the currency which we intend to ship during the next few days. We may have some difficulty in providing insurance for so large a shipment, but we can no doubt arrange it.

Referring to that portion of your telegram in which you indicate that you will want us to take as collateral security, the stock owned by you in the Gold Bar Lumber Company; We beg to say that Mr. Spangler, in charge of our credit department will go to Gold Bar sometime this week and make a thorough examination of the mill property and endeavor

to ascertain the exact condition of the company. We can then tell whether we wish to take the stock of the company or not. At the present time the lumber industry is at a standstill—practically no business being transacted.

In regard to the loan which we have made you; We will expect the loan materially reduced if not entirely paid, during the next sixty days. We can then take up the matter of making you the regular spring advance which we understand you have been receiving for some years from your Seattle connections.

We will write you again as soon as we get the shipment of currency started.

Yours truly,

M. W. PETERSON,

Cashier.

Identification "B" to the deposition of M. W. Peterson. N. W. Bolster, Notary. **[890]**

[Plaintiff's Exhibit "C" for Identification, With Deposition of M. W. Peterson.]

COPY.

DEXTER HORTON & CO., BANKERS.

Seattle, Wash., Sept. 4, 1908.

Fairbanks Banking Company,

Fairbanks, Alaska.

Gentlemen:—

We received from you yesterday, your telegram of the 3d instant as follows:

"Upon receipt of certificate of stock Gold Bar

Lumber Company covering ninety-six shares in our name charge our account and pay E. S. McCord seventy-five thousand dollars for our account of Barnette.''

This payment we were not asked to make. Mr. McCord calling upon us and stating that there were some few details to be arranged before the money would be needed.

In the meantime, following instructions contained in your telegram of the 31st ultimo, we shipped on the 2d instant one hundred and twenty-five thousand dollars, and on the 3d instant, one hundred and twenty-five thousand, both shipments being in currency by registered mail. We telegraphed you yesterday as follows:

> ''Latest advices you have on the way shipments fifteen sixteen seventeen valued at three hundred seventy-seven thousand dollars. Your account is overdrawn one hundred sixty-five thousand dollars in addition to loan two hundred thousand dollars. Payment has been made on all telegraphic transfers with exception of seventy-five thousand dollars MacCord which payment has been deferred until your shipments fully cover. We cannot advance in excess of shipment of Bullion. Your order has been executed two hundred fifty thousand dollars currency.''

In one of your previous telegrams, you asked us what advance we would make against stock of the Gold Bar Lumber Company. We have not yet finished our investigations and have not fully deter-

mined what our course will be, but from present indications, we will be unable to accept the stock, as security, for an advance. Our experience with milling plants has covered quite a broad field and it is our opinion that we should not make an advance against the stock of the Gold Bar Lumber Company, considering the amount of money that company owes and the nature of its holdings.

Referring to the condition of your account with us, we would call your attention to the fact that we are to-day your creditor for three hundred and sixty-five thousand dollars, against which you have gold bullion in transit amounting to about three hundred and seventy-five thousand dollars. We cannot see why we should be called upon to make you a loan in excess of the amount of your bullion in transit. On your side you have treated bullion in transit as a cash credit at this bank and have not hesitated to sell very large telegraphic transfers against them. We wish to be as liberal as possible with all of our customers, but considering present conditions with you and [891] the fact that you have never had a deposit with us and that we have never occupied any position excepting that of advancing you money, we feel that when we have you on our books for the amount which we are now carrying you for, that we are doing all that can be expected. The security which you have deposited with Mr. Griffin as trustee, is an unknown quantity, as far as we are concerned, but we presume that it is good—having been selected by Mr. R. H. Miller, in whose judgment we place great confidence; but this security was subject to withdrawal

and substitution.

As stated in our telegram sent you some time ago, we will only be able to make advances to you against actual shipments of bullion and will not care to make any loans, taking as collateral stocks or your bills receivable.

Trusting that the two shipments which we have just made to you will arrive safely, and trusting that you will be able to secure enough gold-dust for shipment to us to cover what drafts and transfers you are compelled to make upon us, we remain,

Yours truly,
(Sgd.) M. W. PETERSON,
Cashier.

Identification "C" to the Deposition of M. W. Peterson. N. W. Bolster, Notary. **[892]**

State of Washington,
County of King,—ss.

I, N. W. Bolster, a Notary Public in and for the State of Washington, residing at Seattle do hereby certify that the foregoing depositions of the witnesses E. L. Webster, W. H. Parsons, T. F. Ryan, W. M. Peterson, J. S. Mackenzie, and Frank E. Barbour, produced on behalf of the defendants were taken before me, at my office, 707 Lowman building, Seattle, Washington, commencing on the 14th day of March, 1914, and ending on the 16th day of March, 1914, pursuant to the notice for the taking of the depositions of Carl M. Johanson and W. G. Cassels, heretofore taken in the same cause, a copy of which notice is hereto attached, and pursuant to oral stipulation entered into between the attorneys for the re-

spective parties, as appears in the foregoing depositions; that said witnesses, before testifying, were by me duly sworn to testify the truth, the whole truth, and nothing but the truth; that said depositions, by agreement of the parties, were taken down by me in shorthand and thereafter transcribed into longhand; that the signing of said depositions by said witnesses was by agreement between counsel, expressly waived, it being stipulated and agreed that said depositions are to be used on the trial of said cause with the same force and effect as if signed by said witnesses.

And I further certify that the documents marked as Defendants' Exhibits 3, 4, 5, 6, 7, 8, 9, 10 and 11 and Plaintiff's Exhibit "D" were identified and used in connection with the taking of said depositions, and the same are herewith returned as part thereof, and that certain documents [893] identified and used during the cross-examination, were by me marked as "Plaintiff's Exhibits A, B, and C," and returned to and retained by counsel for plaintiff.

IN WITNESS WHEREOF I have hereunto set my hand and fixed my notarial seal this 20th day of March, A. D. 1914.

[Seal] N. W. BOLSTER,

Notary Public in and for the State of Washington, Residing at Seattle.

Notary's fees $209.00. Paid by defendants.

N. W. BOLSTER,

Notary.

[Endorsed]: Received, Clerk of the Court Office, Apr. 20, 1914, Fairbanks, Alaska. Filed in the Dis-

trict Court, Territory of Alaska, 4th Div. Apr. 20, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [894]

Mr. RIDER.—At the close of the reading of the deposition, the plaintiff moves to strike it out, for the reason that it is irrelevant, incompetent and immaterial; that the valuations placed thereon, as shown by the witness, are not based upon any knowledge of his own; that he had no knowledge of it, and had never been within 15 miles of the place.

The COURT.—I will consider the motion later, but it seems to me it is clearly incompetent.

[Testimony of R. M. Crawford, for Defendants.]

R. M. CRAWFORD, a witness called for defendants, having been duly sworn, testified as follows:—

Direct Examination.

(By Mr. McGINN.)

Q. What is your name?

A. R. M. Crawford.

Q. Where do you live?

A. In Fairbanks, Alaska.

Q. How long have you lived in Fairbanks?

A. Since 1904.

Q. What has been your business?

A. Real estate and mining broker.

Q. You have been engaged in that business ever since you were in Fairbanks and up to the present time? A. Yes, sir.

Q. Are you acquainted with the values of property in the town of Fairbanks? A. I am.

Q. Are you acquainted with the property situated

(Testimony of R. M. Crawford.)

on Turner Street between First and Second Avenues, which is occupied by Pinska, the Imperial Cigar Store, and the Barnette Building, and the tin shop in between? You know the property known as the Barnette property? A. Yes, sir.

Mr. RIDER.—Is that property described in the trust deed? [895]

Mr. McGINN.—Yes, sir, and the property where the rents have been coming from.

Mr. RIDER.—To which the plaintiff objects as irrelevant and immaterial.

The COURT.—He may answer, subject to the objection.

Mr. McGINN.—Q. What do you consider the fair and reasonable value of that property at the present time?

A. I should say from twenty to twenty-five thousand.

Q. Are you acquainted with the Barnette residence property? A. I am.

Q. You resided there for a while, did you not?

A. Three years.

Q. State whether or not you are acquainted with the value of that property at the present time.

A. I am.

Q. What would you consider the fair and reasonable conservative value of that property?

A. Thirty-five hundred dollars.

Mr. McGINN.—That is all.

Mr. RIDER.—Stand aside.

[Testimony of H. E. St. George, for Defendants.]

H. E. St. GEORGE, a witness for defendants, after being duly sworn, testified as follows, to wit:

Direct Examination.

By Mr. McGINN.—Q. State your name.

A. H. E. St. George.

Mr. McGINN.—He has already been qualified.

The COURT.—Yes.

Mr. McGINN.—Q. You are acquainted with the property I just described to Mr. Crawford, the Barnette property on the corner of Turner Street between First and Second Avenues? A. Yes, sir.

[896]

Q. Are you acquainted with the value of that property at the present time? A. To some extent.

Mr. RIDER.—The same objection is made to this testimony, as irrelevant, incompetent and immaterial, that was made to Crawford's testimony.

The COURT.—The same ruling. As I understood your pleading (to Mr. McGinn), it was in relation only to the income that had been received that operated as a bar?

Mr. McGINN.—And the property also?

The COURT.—He may answer, subject to the objection.

Mr. McGINN.—Q. What would you consider would be a fair, reasonable and conservative estimate of the value of that property?

A. It is worth at least $20,000, and probably better.

(Testimony of H. E. St. George.)

Q. You would consider it a bargain at $20,000?

A. Yes, I would consider it a bargain at $20,000.

Mr. McGINN.—That is all.

Mr. RIDER.—That is all.

[Testimony of Sidney Stewart, for Defendants (Recalled).]

SIDNEY STEWART, recalled in behalf of defendants, testified:

(By Mr. McGINN.)

Q. Have you the amount that was received from the Dome Creek property?

A. The net amount received from Dome Creek is $5,191.83, and from the Isabelle property on Vault Creek is $4,279.71, and from the city property, including the rentals, and the sale for $2,500 that was made, $21,434.11; or a total of those three items of $31,905.65.

Q. That is the net? A. That is net.

Q. What is the gross? Did you get that? **[897]**

A. The gross on the Dome Creek is $5,673.58, and the expense $481.75; on the Isabelle I have only charged $100 expense for this reason; that the party to whom the expense was paid, was paid in gold-dust. So, from the total amount of gold-dust that I received of him, I paid him in gold-dust, and took his receipt, and entered up the net amount of gold-dust received; and, when I had it assayed I entered up the dollars and cents.

Q. Then, the gross on the city property.

Mr. RIDER.—He didn't give the gross on Vault Creek?

(Testimony of H. E. St. George.)

Mr. McGINN.—He says he can't give the gross on Vault.

A. I handled in it gold-dust, and there was no dollars and cents. It was handled in ounces.

Q. Now, the gross on the town property?

A. I haven't that gross figured up on the town property. There are several pages here to be footed up.

Mr. McGINN.—That is all.

Mr. RIDER.—That is all.

Mr. McGINN.—Mr. Rider, I would like to have you produce the report of the Gold Bar Lumber Company for the year 1913, if you have it, or can find it. [898]

[Testimony of Hugh Dougherty, for Defendants.]

HUGH DOUGHERTY, a witness for defendants, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. McGINN.)

Q. What is your name? A. Hugh Dougherty.

Q. Where do you live?

A. At present on Vault Creek.

Q. How long have you resided on Vault Creek?

A. I went on Vault Creek in December, 1905. [899]

Q. How long have you continued to reside there?

A. Well, continuously up to about three years ago, and intermittently since then.

Q. What is your business? A. Mining.

Q. How long have you followed mining?

(Testimony of Hugh Dougherty.)

A. About sixteen years or more.

Q. In Dawson? A. And this camp.

Q. Are you acquainted with the property known as the Isabelle Association claim on Vault Creek?

A. I am.

Q. When did you first become acquainted with that property?

A. In the early spring of 1906 myself and Tom Carroll sunk the first hole to bedrock and made discovery on the Isabelle.

Q. Have you been acquainted with that property since that time? A. Continuously.

Q. Do you know what that property has produced approximately?

Mr. RIDER.—Is that the property described in the Barnette trust deed?

Mr. McGINN.—Yes.

Mr. RIDER.—We object as irrelevant and immaterial.

Mr. McGINN.—The purpose is to show the value at the present time.

The COURT.—I do not think that is material, but he may answer subject to the objection.

A. I think about five hundred thousand dollars.

Mr. McGINN.—Q. Well, are you acquainted with the value of that property at the present time?

A. Well, in a general way.

Q. I will ask you to state whether it is being operated at the present time. A. It is. [900]

Q. You are pretty well acquainted with the value of property on Vault Creek? A. Oh, yes.

(Testimony of Hugh Dougherty.)

Q. I will ask you to state what in your opinion an undivided three-quarters interest in the Isabelle Association claim is worth at the present time.

A. It would be rather hard to arrive at in a way, because, like all claims on the creeks that have been more or less worked, you never can tell when they are worked out. It might be worked for 10 or 15 years, and it might be worked out in a couple or three or four years. It is hard to arrive at.

Q. But according to your best judgment, with your knowledge of the ground, what would be your judgment of the value of the property?

A. Well, the way it has produced in the past, and the fact that it is still working, I would think it would be a good gamble at ten or fifteen thousand dollars, in a gambling way.

Q. Do you think it would be safely worth $10,000?

A. I would think so.

Mr. McGINN.—You may cross-examine.

Cross-examination.

(By Mr. RIDER.)

Q. When was this Isabelle Group or Isabelle Association opened? A. Do you mean located?

Q. No. When did they begin taking gold out from it?

A. Well, discovery was made about March, 1906, and the following season Joe Conta—(Interrupted).

Q. The beginning of the season of 1907?

A. Yes.

Q. From that time down to this time you think there has been $500,000 taken out of it?

(Testimony of Hugh Dougherty.)

A. Yes, sir. [901]

Q. When was the biggest period of production with reference to the year 1911, was it before or after that time? A. Before that.

Q. The greater portion of the gold that was taken out of there, much the greater portion, was taken out before 1911, was it not? A. I think so.

Q. When you said it would be a good gamble to buy it at from ten to fifteen thousand dollars, did you mean to buy the entire interest or the three-quarters interest?

A. I had reference to this particular interest.

Q. A three-quarters interest? A. Yes, sir.

Q. There is a lay on that property?

A. Yes, sir.

Q. Do you know what the royalty of that lay is?

A. The lay that has been working this winter has been an eighty-five per cent lay.

Q. That is the laymen get 85 per cent?

A. Yes, sir.

Q. And the royalty would be, of course, fifteen per cent? A. Yes.

Q. And the value that you are placing at ten or fifteen thousand dollars would be the value of the royalty on the leasehold?

A. Yes. It might net the purchaser back his money and a reasonable profit.

Q. That creek is pretty well worked out?

A. With reference to that particular part, that is a question, because the Isabelle, while she has produced, I think, in the neighborhood of five hundred

(Testimony of Hugh Dougherty.)

thousand, yet she has not been worked over 1200 feet along the paystreak up and down [902] Vault Creek; so that you would have probably—oh, perhaps more than two-thirds or three-quarters of it yet unworked, even unprospected.

Q. It is unprospected, you say?

A. Well, unprospected to any extent.

Q. What it will produce is purely problematical?

A. Problematical.

Mr. RIDER.—That is all.

[Testimony of Henry Cook, for Defendants.]

HENRY COOK, a witness for defendants, after being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. McGINN.)

Q. What is your name? A. Henry Cook.

Q. What is your business? A. Mining.

Q. How long have you followed mining?

A. Fifteen or sixteen years.

Q. Where have you mined?

A. Here and in Dawson.

Q. Are you acquainted with the Dome Creek Association claim on Dome Creek? A. Yes, sir.

Q. When did you first become acquainted with that property? A. The fall of 1904.

Q. Where have you resided since that time?

A. Well, on Dome until this winter.

Q. Right upon this Dome Creek Association?

A. Yes, sir.

Q. You are one of the owners of that association?

(Testimony of Henry Cook.)

A. Yes. **[903]**

Q. I will ask you to state if you are acquainted with the present value of that property?

A. Well, it has got some value. Oh, it is worth twenty-five or thirty thousand dollars, I should say.

Q. You know there are leases upon the property?

A. Yes, leases.

Q. You mean that it is worth that to the owners, to the lessors?

A. I wouldn't say. Those leases that are on the ground are on a very small percentage.

Q. What are the lives of those leases?

A. They are two years, most of them.

Q. How long have they run ?

A. Some of them—one will be out this summer, and the rest of them are for two years yet.

Q. How long in your opinion will it take to work out that property?

A. It is liable to be worked for three or four years, or four or five years for that matter.

Q. There are tailings upon the ground?

A. Yes, sir.

Q. They are of some value, are they not?

A. Yes, some value. There is a lay on them too.

Q. I will ask you to state whether or not, upon the basis of the lays already granted and given upon this ground, in your opinion you do not believe that that ground will produce to the owners of it at least twenty-five or thirty thousand dollars?

(Plaintiff objects as leading. Sustained.)

(Testimony of Henry Cook.)

Q. How much do you think it will produce to the owners?

A. I think twenty, twenty-five or thirty thousand dollars, that is, in time.

Mr. McGINN.—You may cross-examine. **[904]**

Cross-examination.

(By Mr. RIDER.)

Q. That, however, is just a pure guess?

A. Of course. It is mining.

Q. But it is a guess of a miner of what the property will turn out. Is that what you mean?

A. Yes. It is mining.

Q. What interest do you have in the Dome Creek Association?

A. I own a one-sixth interest in this association.

Q. Do you know what interest Mr. Barnette had?

A. He has one-third.

Q. And the whole property is covered with a lay?

A. Well, no, it is not all covered with leases. There are four lays on it; three lays where they are taking dirt from underground, and another lay on these tailings that was let last winter. Four lays all told on the ground now.

Q. What portion of the entire property do those four lays cover?

A. There is one lay—(Interrupted).

Q. You don't understand me, I think. What proportion of the property is covered by those lays?

A. There is one lay on what is known as 1 below discovery; that is all covered by a lay. And, on 2 below, there is a lay on that. And on 3 below there

(Testimony of Henry Cook.)

is a lay on that. Then there is a lay on 1 and 2 below on the tailings. Then there is some ground upon which there is no lay yet.

Q. What proportion of the ground is covered by those lays?

A. There is probably two-thirds of the ground covered with a lay now.

Q. And the remaining one-third is not prospected?

A. Yes, it has been worked, and there is some ground there of value yet. There were some people talking to me to get a [905] lay the other day.

Q. Do you know what the royalty under those lays is? A. Yes, sir.

Q. What is it?

A. It is twenty per cent on all the ground where they are drifting, and on these tailings it is ten per cent.

Mr. RIDER.—That is all.

Redirect Examination.

(By Mr. McGINN.)

Q. There are dumps out upon the property at the present time?

A. Yes. There are three dumps out there now.

Q. And they are waiting for the running of the water to wash them up? A. Yes.

Mr. McGINN.—That is all.

[Testimony of Ray Brumbaugh, for Defendants.]

RAY BRUMBAUGH, a witness for defendants, after being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. CLARK.)

Q. Your name is Raymond Brumbaugh?

A. Yes, sir.

Q. You are one of the defendants in this case?

A. Yes, sir.

Q. You were elected a director of the Fairbanks Banking Company about the 13th day of March, 1909, were you not?

A. The records will show. I couldn't tell you the date.

Q. That is what is alleged in the complaint, and what the records show—about that date?

A. Yes.

Q. When did you put in your resignation?

A. Sometime in July, 1910. **[906]**

Q. Did you leave Fairbanks at that time?

A. Yes.

Q. Where did you go?

A. I went to Iditarod.

Q. How long were you absent?

A. About two years, I think.

Q. During the time that you were a director it is alleged that certain stock was purchased by the bank, and during the period of your directorship the first that is mentioned in the complaint is the stock of Hart & McConnell, 10 shares, supposed to have

(Testimony of Ray Brumbaugh.)

been purchased on June 10, 1909. Did you ever hear of that stock being purchased? A. I did not.

Q. Did you ever hear of the stock of Louis Enstrom and Oscar Enstrom being purchased by the bank? A. I did not.

Q. Did you ever hear of the bank purchasing, or authorizing the purchase of H. B. Parkin's stock?

A. I did not.

Q. Did you ever hear of any authorization, or know of any authorization, to purchase the stock of Alex Cameron? A. I did not.

Q. Did you ever know of the bank purchasing, or authorizing the purchase of, the stock of Edith McCormick, or J. W. McCormick? A. No, sir.

Q. Did you ever know of the purchase by the bank, or hear of it authorizing the purchase of the stock of Francis H. Taylor? A. I did not.

Q. Did you know of the purchase of the stock, or alleged purchase of the stock, of McGowan & Clark?

A. No, sir. [907]

Q. Did you know anything about the purchase, or alleged purchase, of the stock of Horton & Dunham?

A. I did not.

Q. Was there any action taken by the board of directors at any meeting when you were present, or within your knowledge, concerning the purchase of any of that stock? A. No, sir.

Q. Did the board of directors at any meeting when you were present ever authorize the purchase of any of that stock? A. No, sir.

Q. During the time that you were a director of the

(Testimony of Ray Brumbaugh.)

bank, what was your opinion in regard to whether or not the bank was solvent or insolvent?

A. My opinion was that it was solvent, in good condition.

Q. Did you at any time during the time that you were a director believe or have any reason to believe that the bank was insolvent? A. I did not.

Q. You were present, I believe the minutes show, at the time the dividend was declared on April 12, 1910. A. Yes, sir.

Q. Do you remember the circumstances under which that dividend was declared? Do you remember anything about what took place at that meeting?

A. I don't remember particularly, except that a statement of the condition of the bank was read, and a dividend was declared. That was all.

Q. Did you or did you not have confidence in the officers of the bank?

A. I certainly had confidence in the officers of the bank. [908]

Q. Who was the active manager of the bank at that time, of the three banks? A. Mr. Wood.

Q. Was Mr. Wood present at that meeting, if you remember? A. He was.

Q. And what if anything did he do in regard to making a statement in regard to the condition of the banks?

A. Mr. Wood was the person that made the statement in regard to the condition of the banks at that time on which the decision to declare the dividend was taken.

(Testimony of Ray Brumbaugh.)

Q. Did you believe the bank had a right to declare a dividend at that time? A. I certainly did.

Q. Did you have any reason to suspect or think that the bank was not in a position to declare a dividend? A. I had not.

Mr. CLARK.—Take the witness.

Cross-examination.

(By Mr. RIDER.)

Q. There were presented to the bank, during the time you were a member of its board, regular monthly statements showing the condition of the bank, were there not? A. There was.

Q. Those statements were examined and considered by the board? A. Yes. They were.

Q. At the time this dividend was declared, you say that Mr. Wood was present and presented some material to the board. A. He did.

Q. The matter that he presented to the board as the basis of the dividend was the fact that the Washington-Alaska Bank had declared a dividend of $50,000 which had been paid to the Fairbanks Banking Company, was it not? [909]

A. I think it was. I would have to look it up and see.

Q. Don't you remember that that was what was presented? A. I think that is true.

Q. That was called to your attention, was it not, as a member of the board?

A. It is too long ago for me to remember the details.

Q. Don't you remember whether or not the board

(Testimony of Ray Brumbaugh.)

had been advised, that the Washington-Alaska Bank had declared a dividend of $50,000?

A. I think that is the case.

Q. Then the further steps were taken to distribute that by applying $25,000 of it to the stock account, and the remainder to the surplus and undivided profits out of which the dividend was declared?

A. I think that is the idea.

Q. That is what occurred at the time the dividend was declared? That is the discussion that occurred?

A. I don't remember any particular discussion in regard to the matter. It was suggested by Mr. Wood that this be done, and the board carried out the suggestion.

Q. And that transaction was had as we have related it here? A. I think that is the idea.

Mr. RIDER.—That is all.

Mr. CLARK.—That is all.

Mr. McGINN.—I desire now to read in evidence Section 54 of the general incorporation laws of the State of Nevada, being marked Plaintiff's Exhibit "NN." It is headed (Reads): "May Issue Stock for Labor or Real or Personal Property. Sec. 54. Any corporation existing under any law of this State may issue stock for labor done or personal property or real estate or leases thereof; in the absence of fraud in the transaction, the judgment of the directors as to the value of such labor, property, real estate or leases shall be conclusive."

I desire to read from the minutes of the board of directors [910] of the Fairbanks Banking Com-

(Testimony of Ray Brumbaugh.)

pany held November 12, 1909. (Reads):

"Fairbanks, Alaska, November 12, 1909. Regular monthly meeting of the board of directors of the Fairbanks Banking Company was called at the office of the corporation at Fairbanks, Alaska, at 8 P. M. Members present; Dave Yarnell, John Flygar, C. J. Robinson, J. L. McGinn. There being no quorum present, the meeting was adjourned to November 13 at 3 P. M. J. A. Jackson, secretary."

I desire now to read from the minutes of the board of directors of the Fairbanks Banking Company, December 13, 1909. (Reads):

"The regular monthly meeting of the board of directors of the Fairbanks Banking Company was called at the office of the corporation in Fairbanks, Alaska, at 8 P. M. Members present; R. C. Wood, J. A. Jackson. Statement of the three banks of December 11, 1909, was presented. There being no quorum present, the meeting thereupon adjourned. J. A. Jackson, secretary."

I desire to read from the minutes of the meeting of the board of directors of the Fairbanks Banking Company of January 12, 1910. (Reads):

"The regular monthly meeting of the board of directors of the Fairbanks Banking Company was called at the office of the corporation at Fairbanks, Alaska, at 8 P. M. Members present; John L. McGinn, C. J. Robinson, Dave Yarnell, R. C. Wood, and J. A. Jackson. A statement of the three banks of January 11, 1910, was presented and discussed. A letter from the Gold Bar Lumber Company [911]

(Testimony of Ray Brumbaugh.)

under date November 27, 1909, was read and ordered filed, together with the October statement and trial balance. After an informal discussion relative to reducing the rate of interest and of the affairs in general, there being no quorum present, the meeting thereupon adjourned. J. A. Jackson, secretary.''

I desire now to read from the minutes of the meeting of the board of directors of the Fairbanks Banking Company. February 14, 1910. (Reads):

''The regular monthly meeting of the board of directors of the Fairbanks Banking Company was called at the office of the corporation at Fairbanks, Alaska, at 8 P. M. Members present; McGinn, Wood, Yarnell, Jackson, Robinson, Brumbaugh. The minutes of the meeting of the board of directors of November 13, 1909, and of the adjourned meeting of December 13, 1909, and January 12, 1910, were read and approved, as read. The statement of the three banks as at the close of business February 11th, 1910, was presented and ordered filed. Letter of the Gold Bar Lumber Company dated December 1, 1909, together with a statement and trial balance for November was ordered filed.''

''Minutes of the meeting of the board of directors of the Fairbanks Banking Company, March 12, 1910.

The regular monthly meeting of the board of directors of the Fairbanks Banking Company was called at the office of the corporation in Fairbanks, Alaska, at 8:30 P. M. Members present; J. L. McGinn, D. Yarnell, C. J. Robinson, R. C. Wood, J. A. Jackson.

(Testimony of Ray Brumbaugh.)

After an informal discussion of the affairs in general, and there being no quorum present, the meeting [912] adjourned until April 12, 1910, at 8:30 P. M."

I have read these for this purpose. In all of those meetings there is nothing to show that the directors had any knowledge in regard to this stock that was taken up during those particular periods.

Now, have you got the trust deeds, Mr. Rider?

Mr. RIDER.—I have copies of them.

Mr. McGINN.—They may be read in evidence, and I suppose you want those copies back?

Mr. RIDER.—They are my working copies, but I can get along without them.

Mr. McGINN.—I suppose it will be admitted that they are true and correct copies, and admitted that they were duly executed?

Mr. RIDER.—My understanding is that they are such. There is no question about the execution of them.

Mr. RIDER.—As to the receipt of them, the plaintiff objects as irrelevant and immaterial.

The COURT.—Are they offered for the same purpose that the other papers were yesterday?

Mr. McGINN.—Yes.

The COURT.—That objection is overruled. They may be admitted, subject to the objection.

Deed to Mexican property as Defendants' Exhibit 4, and deed to properties in Alaska as Defendants' Exhibit 5. [913]

[Defendants' Exhibit No. 4—Trust Deed of E. T. Barnette and Isabelle Barnette to Receivers' Property in Alaska.]

THIS TRUST DEED, executed the —— day of March, A. D., 1911, by and between E. T. Barnette and Isabelle Barnette, his wife, of the Town of Fairbanks, in the Territory of Alaska, parties of the first part, and F. W. Hawkins and E. H. Mack, Receivers of the Washington-Alaska Bank, a corporation organized and incorporated under the laws of the State of Nevada, and lately doing a banking business at the said Town of Fairbanks, and their successors in office, of the same place, trustees, parties of the second part, WITNESSETH:

THAT WHEREAS, the Washington-Alaska Bank, a corporation incorporated under the laws of the State of Nevada, and heretofore doing a general banking business in the Town of Fairbanks in the Territory of Alaska, became involved in financial difficulties, and was compelled as a result thereof to close its doors and suspend its general banking business on the 5th day of January, 1911, and at said time was and is now unable to pay in full its depositors and other creditors the owners and holders of unpaid drafts, and the property and assets of the said bank are now in the hands of F. W. Hawkins and E. H. Mack, the second parties, as Receivers, duly appointed by the District Court for the Territory of Alaska, Fourth Division, in that certain action numbered 1597 in the said court entitled "Tanana Valley R. R. Co., a corporation," defendant,

AND WHEREAS, the said E. T. Barnette, for a long time prior to the appointment of said receivers, was and ever since has been and is now, the president and a director of the said Washington-Alaska Bank, and,

WHEREAS, the said Isabelle Barnette, one of the parties of the first part, the wife of the said E. T. Barnette, the other party of the first part, desires to assist her said husband in securing the payment of, and in paying and discharging [914] the obligation of her said husband to the depositors of the said bank, and the owners of unpaid drafts issued by it, and,

WHEREAS, the first parties are informed and believe that the second parties as receivers of the said bank, are about to commence an action in the said court for and on behalf of the creditors of the said Washington-Alaska Bank, against the said E. T. Barnette, one of the first parties, to recover from him the amount of any deficiency that may be ascertained as between the claims of the creditors above mentioned and the amount realized out of the property and assets of the said Washington-Alaska Bank, said action to be based on the liability of the said E. T. Barnette, to said creditors of the said bank, arising out of his management of the affairs thereof, from March, 1908, up to and including January 5th, 1911, as its president, and one of the directors thereof;

NOW, THEREFORE, in consideration of the premises and of the liability of the said E. T. Barnette to the creditors of the said Washington-Alaska Bank, growing out of his connection and manage-

ment of the business affairs thereof as its president and one of the directors during the period of the time last mentioned, and for other good and valuable considerations, the said parties of the first part have granted, and do hereby grant and convey to the parties of the second part and their successors in the office of Receiver of the said Bank, in trust, for the uses and purposes hereinafter specified, all their right, title and interest in and to the following described lands and real estate and the appurtenances thereunto belonging, situate in the Municipality and District of Santiago, Ixcuinita, Territory of Tepic, Republic of Mexico, to wit:

That certain rural property denominated Canada del Tabaco, situate on the right bank of the Santiago River, in the Municipality and District of Santiago, Ixcuinita, Territory of Tepic, which has a superficial extension of seven thousand **[915]** five hundred and seventy-seven (7,577) hectares, eleven aras, and seventy (70) centaras, there being comprehended in this area two hundred eighty-five (285) hectares, twenty-five (25) aras and ninety (90) centaras, being the superficial area of the island called "La Culebra" which formed part of the Haciendo de Nevarrete, but which was separated from the same and incorporated into the Canada del Tabaco by reason of the change in the course of the Santiago River by a strong flood which it suffered that the lines of the Canada del Tabaco are to the east; the Hacienda of San Lorenza from the Estuary of the Bridge to the monument "del Bule" to the east from this monument to that of "La Paloma" with the

aforesaid Hacienda of San Lorenza, and from the monument lastly referred to, to the River Santiago, with the property denominated "Las Palomas" owned by Don Eduardo Martines Ochoa, and toward the southwest of the Canada del Tabaco is situated, the island named "Los Caballos" and that although this island appears of the plan of said Hacienda it is not embraced in the lands conveyed because it belongs to Senor Don Manuel Lanzagorta.

The landed property alienated is composed of cultivated lands, grazing lands and forest. It has 8 fields fenced with wire. The residence is situated in the island of Culebra, constructed of stone with roof of tile; a warehouse of palm twigs, a roof of thatch in bad condition; stable with roof of thatch. On the Canada del Tabaco there is a storehouse of wooden walls with roof of tile and a warehouse of cedar wood with a roof of tile, all being comprehended on this conveyance, as also the waters, the mountains, and whatever more belongs or can belong of deed or right to the said landed property, containing 18,723 (eighteen thousand seven hundred and twenty-three acres) more or less, according to the English measurement;

TO HAVE AND TO HOLD the said lands and tenements in trust and upon the following terms and conditions, that is to say;

THAT WHEREAS on or about the 18th day of March, 1908, the Fairbanks Banking Co., a corporation, incorporated under [916] the laws of the State of Nevada and authorized to do a banking business in the City of Fairbanks, Territory of Alaska, commenced to transact a general banking business at

said point under their said charter of incorporation, and continuously maintained and operated a bank at said place from the said date until on or about January 5th, 1911; that on or about the 8th day of October, 1910, the name of the said Fairbanks Banking Co. was, under and by virtue of the laws of the State of Nevada, duly changed to that of the Washington-Alaska Bank, its present name, and from that date the business of the said Fairbanks Banking Co. was continued under the name of the Washington-Alaska Bank until its failure as aforesaid; that during all of said period said E. T. Barnette was the president and one of the directors of the said Fairbanks Banking Co., and that said Washington-Alaska Bank, and as such was active and influential in the control and management of its business affairs; that on or about the said 5th day of January, 1911, the said Fairbanks Banking Co., now called Washington-Alaska Bank, became insolvent, and receivers were appointed to take charge of the property and assets thereof in the court and causes above mentioned; that it has at all times since appeared, and is now apparent that there is and will be a large deficiency as between the obligations of the said banking institution to its depositors and the owners of unpaid drafts on the one side, and the proceeds of its property and assets on the other; that by reason of all the premises the said E. T. Barnette has heretofore assumed, and does now assume to take upon himself the obligation of paying the depositors and owners of unpaid drafts of the said banking institution, and their representatives, the second parties herein and their

successors or successor in the office of receivers or receiver, any deficit that may be hereafter ascertained as between the amounts due to such depositors and owners of unpaid drafts, from the said banking institution on the 5th day of January, 1911, together [917] with 6% per annum interest thereon from said date, and the amount realized out of the property and assets of the said bank and paid to such creditors; that the amount of such deficit is not known at this time, and cannot be ascertained at any particular period of time in the near future that can now be named, but will be so ascertained by or before November 18, 1914.

IT IS THEREFORE, understood and agreed between the parties hereto that this conveyance is upon these conditions, that is to say; That the said second parties and their successors or successor are not to take possession of the real property above described, nor the rents, issues and profits thereof, nor have any right to the possession and use thereof at any time prior to November 18, 1914, but if at that date the demands of the depositors and owners of unpaid drafts of the said bank with 6% per cent per annum interest thereon from January 5th, 1911, have not been fully paid and satisfied, either out of the property and assets of the said bank as adminstered by the said receivers, or otherwise, or have not been fully paid and satisfied by the said E. T. Barnette, then the said second parties, their successors or successor, in the office of receivers or receiver, as such trustees or trustee, may take immediate possession of the real property above described, and they are here-

by empowered by the first parties to sell at private sale the whole or the part of said real property then unsold thereof upon the best terms they may be able to secure and make property conveyance of title to the purchaser or purchasers thereof, receive the purchase price and turn the same into the said court, and pay out so much thereof as may be needed to fully liquidate and pay any balance that may remain unpaid of the claims and demands of the depositors and owners of the unpaid drafts of the said bank, said moneys to be disbursed to such creditors under the orders of the said court; and if there be more of the said purchase money than is required to pay and discharge the said balance due **[918]** to the depositors and owners of unpaid drafts of the said bank, then such overplus shall be returned to the said parties of the first part, and

WHEREAS, on the 18th day of November, A. D. 1909, the said E. T. Barnette, one of the parties of the first part entered into a contract in writing with George Edgar Ward and W. D. Begg, under which the said last-named parties obtained upon conditions named therein the right to secure title to an interest in the above-described real property equal to forty-nine (49) per cent thereof, in which agreement and contract it is provided that they will on or before Nov. 18, 1914, pay to the said E. T. Barnette the several sums of money mentioned therein, viz., One of Two Hundred Thousand Dollars ($200,000) and interest; another of Twenty-six Thousand and Twenty-five Dollars ($26,025.00) and interest, and other contingent sums mentioned in paragraph four of the

said contract, a true copy of the said contract now being on file in said court, in said cause No. 1597, and especially referred to and made a part of this Trust Deed.

NOW, THEREFORE, upon all of the considerations hereinbefore mentioned, if at any time after the delivery hereof and on or prior to Nov. 18, 1914, the said George Edgar Ward and W. D. Beggs, mentioned in the said contract, shall express a willingness to and desire to pay the said E. T. Barnette any part or all of the sums or sum of money mentioned therein, then the parties of the first part do hereby authorize and empower the parties of the second part and their successors to collect and receive from the said Ward and Beggs such payments, and the said Ward and Beggs are hereby authorized to pay the same to the said trustee or trustees herein, such moneys if so paid and received to be disposed of by second parties in the manner above directed for the disposition of the proceeds of the sale of the lands conveyed, providing always that at the time of such payment there **[919]** remains something still due to the said creditors of the said bank.

And the said E. T. Barnette, one of the parties of the first part, does, hereby covenant and agree to and with the said parties of the second part and their successors, that the said property so conveyed, situated in the Republic of Mexico, and is owned by him in fee simple, and is not subject to any lien, mortgage or other incumbrances, contract or agreement of any kind, except the said agreement between the said E. T. Barnette and the said Geo. Edgar Ward and

W. D. Beggs, above referred to.

It is further agreed and understood by all the parties hereto that if at any time after delivery of this trust deed the demands of the depositors and the owners of unpaid drafts of the Washington-Alaska Bank shall be satisfied in full, the parties of the second part will upon demand of the parties of the first part reconvey to them or either of them as they may direct, all the right title and interest of the parties of the second part, and to the said real property then vested in them by virtue of this trust deed.

AND FINALLY IT IS UNDERSTOOD AND AGREED between the parties hereto that if after applying the proceeds of the property and assets of the said Washington-Alaska Bank the amount collected by the second parties from the said George Edgar Ward and W. D. Beggs, if any, and the proceeds of the sale of the real property described above situated in the Republic of Mexico, the same being described in the trust deed of even date, herewith, between the same parties involving the same and the amount or amounts collected and received, if any, by the second parties and their successors from the rents and issues and sale of real property conveyed by this trust deed there should remain a balance yet due to the depositors and owners of unpaid drafts of the said bank, then the said first parties upon the considerations above expressed, do hereby [920] promise to and agree to and with the parties of the second part and their successors to make good such balance or deficiency and pay the same to the second parties upon demand.

THIS TRUST DEED and all the covenants and agreements therein contained shall be binding upon the heirs, executors and administrators of the parties of the first part and the successors of the parties of the second part.

IN WITNESS WHEREOF the parties of the first part have hereunto set their hands and seals this the —— day of March, A. D. 1911.

Executed in the presence of the following witnesses:

——————————, (LS.)

——————————, (LS.) [921]

United States of America,
Territory of Alaska,—ss.

BE IT REMEMBERED that on this —— day of March A. D. 1911 before me, the undersigned, Clerk of the District Court for the Fourth Judicial Division of the Territory of Alaska, appeared E. T. Barnette, known to me to be the same individual who signed the within and foregoing trust deed, and then and there acknowledged to me that he executed and signed the within and foregoing instrument in writing freely and voluntarily, upon the considerations and for the uses and purposes therein mentioned and specified.

And at the same time and place personally appeared Isabelle Barnette, known to me to be the wife of the said E. T. Barnette and having been examined by me privily and apart from her said husband and having fully explained to her the nature and the nature and contents thereof, she the said Isabelle Barnette acknowledged to me that she had signed the above and foregoing trust deed and declared that she

had executed the same freely and voluntarily for the purposes and considerations therein expressed, and that she did not wish to retract it.

GIVEN under my hand and seal of office this —— day of March, A. D. 1911.

———————————

Clerk of the District Court for the Fourth Judicial Division, Territory of Alaska. [922]

[Defendants' Exhibit No. 5—Trust Deed of E. T. Barnette and Isabelle Barnette to Receivers, Property in Alaska.]

33589 TRUST DEED.

THIS TRUST DEED, executed the 18th day of March, A. D. 1911, by and between E. T. Barnette and Isabelle Barnette, his wife, of the Town of Fairbanks, in the Territory of Alaska, parties of the first part, and F. W. Hawkins and E. H. Mack*m* Receivers of the Washington-Alaska Bank, a corporation organized and incorporated under the laws of the State of Nevada, and lately doing a banking business at the said town of Fairbanks, And their successors in office, of the same place, Trustees, parties of the second part, WITNESSETH:

THAT WHEREAS: The Washington-Alaska Bank, a corporation, incorporated under the laws of the State of Nevada, and heretofore doing a general banking business in the Town of Fairbanks, in the Territory of Alaska, became involved in financial difficulties, and was compelled as a result thereof to close its doors and suspend its general banking busi-

ness on the 5th of January, 1911, and at said time was and is now unable to pay in full its depositors and other creditors the owners and holders of unpaid drafts, and the property and assets of the said bank are now in the hands of F. W. Hawkins and E. H. Mack, the second parties, as receivers, duly appointed by the District Court for the Territory of Alaska, Fourth Division, in that certain action numbered 1597 in the said court, entitled Tanana Valley Ra*ul*-road Company, a corporation, and John Zug, Plaintiffs, vs. Washington-Alaska Bank, a Corporation*m*, Defendant; and

WHEREAS: The said E. T. Barnette, for a long time prior to the appointment of said receivers was and ever since has been and is now, the president and director of the said Washington-Alaska Bank; and,

WHEREAS, the said Isabelle Barnette, one of the parties of the first part, the wife of the said E. T. Barnette, the other party of the first part, desires to assist her said husband in securing the [923] payment of, and in paying and discharging the obligation of her said husband to the depositors of the said bank and the owners of unpaid drafts issued by it; and,

WHEREAS, The first parties are informed and believe that the second parties, as receivers of the said Bank, are about to commence an action in the said court for and on behalf of the creditors of the said Washington-Alaska Bank, against the said E. T. Barnette, one of the first parties, to recover from him the amount of any deficiency that may be ascertained as between the claims of creditors above mentioned

and the amount realized out of the property and assets of the said Washington-Alaska Bank, said action to be based on the liability of the said E. T. Barnette to said creditors of the said bank, arising out of his management of the affairs thereof, from March 1908, up to and including January 5th, 1911, as its president and one of the directors thereof;

NOW, THEREFORE, in consideration of the premises, and of the liability of the said E. T. Barnette to the creditors of the said Washington-Alaska Bank, growing out of his connection with and management of the business affairs thereof as its president and one of the directors during the period of time last mentioned, and for other good and valuable considerations, the said parties of the first part have granted, and do hereby grant and convey to the parties of the second part and their successors in the office of receiver of the said bank, in trust, for the uses and purposes hereinafter specified, all their right, title and interest in and to the following described lands and real estate and the appurtenances thereunto belonging, situate in the Fairbanks Recording District*m* Territory of Alaska, to wit:

An undivided one-half interest in lot five (5) in block four (4) in the incorporated town of Fairbanks, Alaska, according to the official **[924]** survey of Fairbanks townsite made by L. E. Robe in the year 1909; also That certain lot numbered four (4) in block seventeen (17) in the incorporated town of Fairbanks, Alaska, according to the official survey of Fairbanks townsite made by L. S. Robe, in the year 1909; also

An undivided one-third interest of, in and to that certain Dome Group or association placer mining claim, situate on Dome creek, in the Fairbanks Mining Recording District, Alaska; also

An undivided three fourths interest of, in and to the Isabelle Group or association Placer Mining Claim, situate on Vault creek, in the Fairbanks Mining and Recording District, Alaska.

All that certain lot numbered five (5) in block fourteen (14) in the incorporated town of Fairbanks, Alaska, according to the official survey of Fairbanks townsite made by L. S. Robe in the year 1909;

Also That portion of lot numbered five (5) in block thirty-eight (38) in the incorporated town of Fairbanks, Alaska, beginning at the northeast corner of said lot on Second Avenue; thence extending in a westerly direction along said Second Avenue boundary line of said lot a distance of fifty feet; thence extending in a southerly direction paralell with the easterly boundary line of said lot a distance of about one hundred and forty feet to Third Avenue; thence extending along Third Avenue boundary line of said lot in an easterly direction a distance of about forty-six feet to the southeast corner of said lot; thence extending along the easterly boundary line of said lot in a northerly direction a distance of about one hundred and forty feet to the northeast corner of said lot, the point of beginning.

TO HAVE AND TO HOLD the said lands and tenements in trust, and upon the following terms and conditions, that is to say: **[925]**

THAT WHEREAS, on or about the 18th day of

March, 1908, the Fairbanks Banking Company, a corporation, incorporated under the laws of the State of Nevada, and authorized to do a banking business in the City of Fairbanks, Territory of Alaska, commenced to transact a general banking business at said point under their said charter of incorporation, and continuously maintained and operated a bank at the said place from the said date until on or about January 5, 1911; that on or about the 8th day of October, 1910, the name of the said Fairbanks Banking Company, was, under and by virtue of the laws of the State of Nevada, duly changed to that of Washington-Alaska Bank, its present name, and from that date the business of the said Fairbanks Banking Company was continued under the name of the Washington-Alaska Bank until its failure as aforesaid; that during all of said period said E. T. Barnette was the president and one of the directors of the said Fairbanks Banking Company and the said Washington-Alaska Bank, and as such was active and influential in the control and management of its business affairs; that on or about the said 5th day of January, 1911, the said Fairbanks Banking Company, now called the Washington-Alaska Bank, became insolvent, and receivers were appointed to take charge of the property and assets thereof in the court, and cause above mentioned; that it has at all times since appeared, and is now apparent, that there is and will be a large deficiency as between the obligations of the said banking institution to its depositors and the owners of unpaid drafts on the one side and the proceeds of its property and assets on the other; that by rea-

son of all of the premises, the said E. T. Barnette has heretofore assumed, and does now assume and take upon himself the obligation to pay the depositors and owners of unpaid drafts of the said banking institution and their representatives, the second parties herein, and their successors or successor in the office of receivers or receiver, any deficit that may hereafter be ascertained **[926]** as between the amounts due to each depositors and owners of unpaid drafts, from the said Banking institution on the 9th day of January, 1911, together with six per cent per annum interest thereon from said day, and the amount realized out of the property and assets of the said bank and paid to such creditors; that the amount of such deficit is not known at this time, and cannot be ascertained at any particular period of time in the near future that can now be named, but will be so ascertained by or before Novr. 18th, 1914.

IT IS THEREFORE UNDERSTOOD AND AGREED between the parties hereto that the parties of the second part may take immediate possession of all of the real property above described and improvements and appurtenances thereunto belonging; and thereafter continue to manage, control, lease the same if necessary, and collect and receive the rents, issues and profits thereof, and after deducting reasonable charges for collecting the same and the payment of taxes assessed thereon, insurance and other leg*ima*te expenses connected with the management of such property, they shall return to the said court and its receivers the net amount of such rents, issues and profits, the same to be disbursed by the said Court

through its receivers pro rata to the said depositors and the owners of unpaid drafts heretofore issued by, the said bank.

And if at any time after the delivery of this Trust Deed the said trustees and their successors or successor and the said parties of the first part shall deem it more advantageous to sell and dispose of than to hold and retain any of the real property above described, then the same may be sold and conveyed to the purchaser or purchasers by the said trustees and the proceeds derived from such sale or sales shall by the said trustees be delivered to the said Court or its receivers and be disbursed under the orders of the Court pro rata **[927]** to the said depositors and owners of unpaid drafts; but if it should happen that on the 18th day of November, 1914, the demands of the depositors and owners of unpaid drafts of the said bank, with six per cent per annum interest thereon from Jan. 5, 1911, have not been fully paid and satisfied, either out of the property and assets of the said ba*m*k as administered by the said Receivers or otherwise, or have not been fully paid and satisfied by the said E. T. Barnette, then the said second parties, or their successors or successor in the office of receivers or receiver, as such trustee or trustees may and they are hereby empowered by the first parties to sell at private sale the whole or the part of said real property then unsold upon the best terms that they may be able to secure and make proper conveyance of title to the purchaser or purchasers thereof, receive the purchase price and turn the same unto the said court, and pay out so much thereof as may be needed to fully

liquidate and pay any balance that may remain unpaid of the claims and demands of the depositors and owners of the unpaid drafts of the said bank, said moneys to be disbursed to such creditors under the orders of the said Court; and if there should be more of the said purchase money than would be required to pay and discharge the said balance due to depositors and owners of unpaid drafts of the said bank, then such overplus shall be returned to the said parties of the first part;

And the said parties of the first part, do hereby covenant and agree to and with the said parties of the second part, and their successors, that the said property so conveyed, is of record in their names and is owned by them in fee simple and is not subject to any lien, mortgage or other incumbrance.

It is further agreed and understood by all of the parties hereto that if at any time after the delivery of this Trust Deed, the demands [928] of the depositors and owners of unpaid drafts of the said Washington-Alaska Bank shall be satisfied in full the parties of the second part will upon the demand of the parties of the first part reconvey to them or either of them, as they may direct, all the right, title and interest of the parties of the second part in and to said real property then vested in them by virtue of this Trust Deed.

AND, FINALLY, IT IS UNDERSTOOD AND AGREED between the parties hereto that if, after applying the proceeds of the property and assets of the said Washington-Alaska Bank, the amount collected by the second parties from George Edgar

Ward and W. B. Begg, if any, and the proceeds of a sale of the real property situate in the Republic of Mexico (the same being described in a Trust Deed of even date herewith, between the same parties involving the same subject matter) and the amount or amounts collected and received, if any, by the second parties and their successors from the rents and issues and sale of real property conveyed by this Trust Deed, there should remain a balance yet due to the depositors and owners of unpaid drafts of the said bank, then the said first parties, upon the considerations above expressed, do hereby promise and agree to and with the parties of the second part, and their successors, to make good such balance or deficiency and pay the same to the second parties upon demand.

THIS TRUST DEED and all the covenants and agreements therein contained shall be binding upon the heirs, executors and administrators of the parties of the first part, and the successors of the parties of the second part.

IN WITNESS WHEREOF the parties of the first part have hereunto set their hands and seals this the 18th day of March, A. D. 1911.

E. T. BARNETTE. (Seal)
ISABELLE BARNETTE. (Seal)

Executed in the presence of the following witnesses:

GEO. F. GATES,
HAROLD C. GREEN. [929]

United States of America,
Territory of Alaska,—ss.

BE IT REMEMBERED that on this 18th day of

March, A. D. 1911, before me, the undersigned, clerk of the District Court for the Fourth Judicial Division of the Territory of Alaska, personally appeared E. T. Barnette, known to me to be the same individual who signed the within and foregoing Trust Deed, and then and there acknowledged to me that he executed and signed the within and foregoing instrument in writing, freely and voluntarily upon the considerations and for the uses and purposes therein mentioned and specified.

And at the same time and place personally appeared ISABELLE BARNETTE, known to me to be the wife of the said E. T. Barnette, and having been examined by me privily and apart from her said husband, and having fully explained to her the nature and contents thereof, she, the said Isabelle Barnette, acknowledged to me that she had executed the same freely and voluntarily for the purposes and considerations therein expressed, and that she did not wish to retract it.

GIVEN under my hand and seal of office this 18th day of March, A. D. 1911.

[District Court Seal.]

C. C. PAGE,

Clerk of the District Court for the Fourth Judicial Division, Territory of Alaska.

Filed for record March 30, 1911, at 25 min. past 10 A. M., in Vol. 15 Deeds, page 116. John F. Dillon, Recorder. By R. H. Geoghegan, Deputy.

[Testimony of R. C. Wood, for Defendants (Recalled).]

R. C. WOOD, witness for defendants, recalled, testified:

Direct Examination.

By Mr. McGINN.—Q. Did you ever make a computation to determine [930] the amount that had never been paid to the creditors of the Fairbanks Banking Company who were existing upon the 30th day of June, 1908?

A. I made a computation of all the creditors from the 16th of March until, I think, the 1st day of July, 1908, and I find that—(interrupted).

Mr. RIDER.—You were merely asked if you made the computation. A. Yes, I did.

Q. What did you find, as a result of that?

A. Well, including the savings deposits and commercial deposits, there is $4,105.26. Now, I don't think that includes the deposit account of the Scandinavian-American Bank.

Defendants rest.

Mr. RIDER.—I desire to read in evidence the 8th subdivision of Section 9, Article II, entitled "Powers of Directors" of the By-laws of the Fairbanks Banking Company. (Reads:)

"To adopt such rules and regulations for the conduct of their meetings, and the management of the affairs of the corporation as they may deem proper, not inconsistent with the laws of the State of Nevada, or these by-laws."

Now, I wish to read from the General Incorporation Laws of Nevada, Section 7, Subdivision 7.

Mr. RIDER.—(Reads:)

"Every corporation created under the provisions of this Act shall have the power;" Subdivision 7.—"To make by-laws not inconsistent with the Constitution or laws of the United States or of this State, fixing and altering the number of its Directors or Trustees, providing for their election and removal or for the management of its property, for regulation and government of its affairs, and for the certification and transfer of its stock, and to provide suitable penalties for a breach thereof not exceeding $25 in any one case."

In conjunction with this section of the Nevada law which was read in direct evidence, and applicable to the matters interposed as defenses, I want to read Sections 28, 29 and 30 of the Nevada Incorporation Law.

Mr. RIDER.—(Reads Sections 28 and 29 above referred to.) [931]

"Section 28: Payment of Subscribed Capital Stock. The stockholders of any corporation formed under this Act may in the by-laws of the company prescribe the times, manners and amounts in which the payment of the sums subscribed by them respectively shall be made; but in case the same shall not be prescribed, the Trustees or Directors shall have power to demand and call in from the stockholders the sums by them subscribed, at such times and in such manner, payments, or installments, as they may deem proper. The trustees shall also have power at

such times and in such amount, as they may from time to time deem the interest of the corporation to require, to levy and collect assessments upon the capital stock of the corporation, as herein provided, but not upon stock issued as paid up unless so specified and provided in the original certificate or articles of incorporation, which shall not be amended in this respect. Notice of each assessment or call shall be given to the stockholders personally, or by publication once a week for at least four weeks, in some newspaper published in the county in which the principal office or place of business of the company is located, and in a newspaper published in the county wherein the property of the company or corporation is situated if in this State, and if no paper be published in either of such counties, then the newspaper published nearest to the said principal place of business in the State."

"Section 29: Sale for non-payment of calls, etc. If after such notice has been given, any stockholder shall make default in the payment of the call or assessment upon the shares held by him, so many of such shares may be [932] sold as will be necessary for the payment of the call or amount of subscribed capital called in or the assessment upon all the shares held by him, her or them, together with all costs of advertisement and expenses of sale. The sale of said shares shall be made at the office of the company at public auction to the highest bidder, after a notice thereof published for four weeks, as above in this section directed, and a copy of such notice mailed to each delinquent stockholder if his address is known

four weeks before such sale, and at such sale the person who shall pay the call or assessment so due, together with the expenses of advertising and sale, for the smallest number of shares, or portion of a share, as the case may be, shall be deemed the highest bidder." [933]

Mr. RIDER.—(Reads Section 30 of General Incorporation Laws of State of Nevada.)

"Section 30. When Company May Bu*t* Its Stock. —Every corporation in this State shall also have the power, whenever at any assessment sale of the stock of said corporation or sale for unpaid subscription or call no person will take the stock and pay the assessment, or amount unpaid and due thereon and costs, to purchase such stock and hold the same for the benefit of the corporation. All purchases of its own stock by any corporation in this State which have been previously made at assessment sales whereat outside parties have failed to bid, and which purchases were for the amount of assessments due, and costs or otherwise, shall be held valid and as vesting the legal title to the same in said corporation. The stock so purchased shall be held subject to the control of the remaining stockholders, who may make such disposition of the same as they may deem fit. Whenever any portion of the capital stock of any corporation is held by the said incorporation by purchase or otherwise, a majority of the remaining shares of stock in said corporation shall be held to be a majority of the shares of the stock in said incorporated company, for all purposes of election or voting on any question before a stockholders' meeting." [934]

Mr. RIDER.—I now desire to introduce in evidence statement of the condition of the Washington-Alaska Bank on October 11, 1910, which was identified by the witness Clark as being the statement that was presented to the board of directors at a meeting held—I don't remember the date, but at the meeting referred to in his testimony.

Mr. McGINN.—To which we object as not proper rebuttal evidence.

Mr. CLARK.—And that it is irrelevant, incompetent and immaterial.

The COURT.—Objection overruled. (Marked Plaintiff's Exhibit "RR.")

[Plaintiff's Exhibit "RR"—Statement of Condition of Washington-Alaska Bank, Oct. 11, 1910.]

"Statement of the Condition of the Washington-Alaska Bank on October 11, 1910.

Resources:		
Loans and discounts		601165.14
Stocks		417949.00
Real Estate		50820.07
Furniture and Fixtures		4800.00
Cash on Hand:		
Coin	$348647.00	
Dust	44989.99	393636.99
Overdrafts		21343.26
Expenses and Savings Interest		61401.59
Due from Banks		79252.20
		$1630368.25

Liabilities:

Capital Stock Paid in................		169600.00
Deposits:		
Commercial	1084551.17	
Savings	295817.52	1380368.69
Interest Exchange and Undivided Profits		51576.29
Due to Banks..........................		28823.27
		1630368.25"

[Testimony of Sidney Stewart, for Plaintiff (Recalled).]

SIDNEY STEWAR*D* recalled by plaintiff.

Mr. RIDER.—Q. Have you the books of the partnership showing the amount carried on those books to the credit of the depositors Ryan and Yarnell during the month of December, 1907?

A. I have not those books with me of the deposits.

Q. Have you taken from those books that item?

A. I have; yes, sir.

Mr. RIDER.—Q. Whose account have you the book opened to? A. Dan Ryan's.

Q. What was the balance to the credit of Dan Ryan on December 10, 1907? A. $9,769.86.

Q. What was the amount to his credit on December 23d, 1907? A. $9,707.86.

Q. Turn to the Yarnell account. What was the amount to his credit on December 11, 1907?

A. $15,858.86.

Q. And on December 23d?

A. The same amount.

Q. And on December 27th? A. $10,858.86.

Mr. RIDER.—That is all. [936]

(Testimony of Sidney Stewart.)

Cross-examination.

(By Mr. McGINN.)

Q. How much did Dave Yarnell have upon the 30th day of November, 1907? A. 36,050.46.

Mr. RIDER.—That completes the plaintiff's case. Plaintiff rests.

By Mr. McGINN.—We desire to introduce in evidence Subdivision 4 of Section 7 of the laws of Nevada. (Reads:)

"Every corporation created under the provisions of this Act shall have the power." Subdivision 4—

"To hold, purchase and convey real and personal estate, and to mortgage any such real and personal estate with its franchises; the power to hold real and personal estate except in the case of religious corporations, shall include the power to take the same by devise or bequest in this State or in any other State, Territory or country."

Also subdivision 9, of said section 7. (Reads:)

"To conduct business in this State, other States, the District of Columbia, the Territories, Districts, Dependencies and Colonies of the United States and in foreign countries, and have one or more offices out of this State, and to buy or otherwise obtain, hold, purchase, mortgage and convey real and personal property within or out of this State, to issue its bonds, debentures or other securities and hypothecate its franchises and property of any kind as security therefor."

Testimony closed. [937]

The foregoing, from page 1 to page ——, includes

all the testimony, evidence and exhibits given, offered, admitted and used upon the trial in the above-entitled cause in support of and against the allegations and denials of the amended complaint, answers and replies relative to the subscription for taking over, surrender and cancellation of stock of said Fairbanks Banking Company by the corporation and the directors thereof, except as to the stock of Strandberg Brothers, B. E. Johnson, Emma Strandberg and John L. McGinn; and also all of the testimony, evidence and exhibits given, offered, admitted and used in support of and against the allegations and denials of the amended complaint, answers and replies relative to the declaration of the dividend by the directors of said Fairbanks Banking Company; and the payment thereof; and also all of the testimony, evidence and exhibits given, offered, admitted and used upon the trial of the above-entitled cause in support of and against the further and separate answer and defense of all of the defendants, wherein the said defendants allege and set forth that there was a complete accord and satisfaction of the wrongs and injuries charged in the amended complaint between E. T. Barnette and Isabelle Barnette and the former receivers of said Washington-Alaska Bank, and of the further and separate answer and defense wherein it is alleged that the wrongs charged in the complaint have been fully satisfied and paid by the rents, issued and profits received and derived from the property of the said E. T. Barnette and Isabelle Barnette and of the property deeded by them to said receivers and now in their possession.

That after the plaintiff and defendants had rested, the said cause was argued by the respective attorneys and the same submitted to the Court for consideration and decision, and thereafter and before the findings of fact and conclusions of law had been made and [938] signed by the Court and filed with the clerk thereof, the said defendants requested the Court to make the following Findings of Fact and Conclusions of Law, to wit: [939]

[Title of Court and Cause.]

Findings of Fact and Conclusions of Law Requested by Defendants.

BE IT REMEMBERED, That on the 22d day of April, 1914, came on regularly for trial the above-entitled cause; O. L. Rider, Esq., appeared as attorney for the plaintiff, and A. R. Heilig, Esq., and John L. McGinn, Esq., for defendants Wood, Healey, Peoples and McGinn, and Messrs. McGowan & Clark for defendants Jesson, Brumbaugh, Hill, Clark, Preston, Peoples and Healey;

And the Court, after hearing the testimony offered by both plaintiff and defendants, and after the argument of counsel, did, on the 6th day of May, 1914, take said cause under consideration for determination and decision.

And now, on this 22d day of May, 1914, the defendants Peoples, Jesson, Wood, McGinn, Hill, Brumbaugh, Clark, Preston and Healey, before any decision of the Court in writing has been made or filed with the clerk of this court, offer the following find-

ings of fact and conclusions of law, and request the Court to make and sign the same as its findings of fact and conclusions of law, and request the Court to make and sign the same as its findings of fact and conclusions of law in this cause:

FINDINGS OF FACT.

I.

That on the 12th day of December, 1907, owing to the unusual and continuous withdrawal of funds by the depositors of the [940] Fairbanks Banking Company, a copartnership, brought about by a feeling of unrest in financial circles all over the United States as well as in the Tanana Valley, Alaska, the said Fairbanks Banking Company, a copartnership, was compelled to close its doors and suspend business, and a meeting of the depositors and creditors of said bank was immediately called, and, on the 14th day of December, 1907, a committee was selected to investigate and examine into the affairs of said Fairbanks Banking Company, a copartnership, and to report back to the meeting of the depositors and creditors to be held on December 16, 1907. That said committee was thereafter known as the board of directors, after the reopening of said bank.

II.

That said committee so selected consisted of men of high standing in this community for honesty, integrity, and good business judgment.

That said committee, acting according to instructions, and after having obtained expert accountants, proceeded to examine carefully into the affairs of said bank, and, after examining all of the books,

vouchers, documents and other evidence of the affairs of said bank, and after separately scrutinizing all of the notes, mortgages, certificates, and other resources of said bank, made a report to said meeting of depositors on December 16, 1907, of the resources and liabilities of said bank, and in said report declared and stated that the resources of said bank exceeded its liabilities in the sum of $288,579.73. That said committee reported that the net value of the Gold Bar Lumber Company stock, a corporation of the state of Washington, held by said copartnership, was the sum of $341,949.

That said committee, upon an examination of the loans, divided the same into three classes; class number 1 being the class which said committee considered gilt edge, class number 2 [941] being the class which said committee considered perfectly good, and class number 3 being the class which said committee considered might be doubtful; and which said last, or doubtful class, amounted to the sum of $66,235.44, and was eliminated and not considered in arriving at the resources of said Fairbanks Banking Company.

That said committee, at the time of making said report, recommended that the bank continue business, and that, owing to the peculiar financial conditions then existing, it should issue a certain amount of scrip, to be issued by trustees in whose hands a certain amount of the securities were to be placed, to meet the current demands of the depositors; and that thereafter on December 23, 1907, the said copartnership resumed business and such scrip was issued

and was in current use until after the time of the transfer of the partnership business to the corporation. That said committee, after the reopening of said bank, was known as the board of trustees.

III.

That after, and in the fore part of January, 1908, a large number of business, professional and mining men of the Fairbanks Recording District, Alaska, met in the town of Fairbanks, Alaska, for the purpose of organizing a corporation to purchase and take over and absorb the business of the Fairbanks Banking Company, a partnership, and at said meeting negotiations were begun by said proposed incorporators with said copartnership for the purchase of the same. That at said meeting a committee was appointed to go into the details of the reorganization of the Fairbanks Banking Company, and to report a basis upon which the business should be taken over, two of the members of this committee having been members of the committee of depositors which had in December examined the assets. [942]

IV.

That said committee met on the 5th day of January, 1908, and, after investigating the affairs of the bank, made the following report to be presented for the consideration of the proposed new corporation:

(a) That the issued stock for the proposed new corporation be as of date February 15, 1908; that notes be taken for all deferred payments; that the same bear interest at the rate of one per cent per month from February 15, 1908, until paid; that twenty-five per centum of the unpaid for stock be

due and payable on or before June 1st, 1908, and that the balance be due and payable on or before July 1st, 1908.

(b) That Captain E. T. Barnette and James W. Hill, with such associates as they may require, prepare a subscription list.

(c) That the amount subscribed by any person be left to that person, and in case of over-subscription should be reduced proportionately.

(d) That the notes, properties, and securities of the Fairbanks Banking Company, the old institution, examined by its present acting board of trustees and on which a valuation of $288,000.00 in excess of its liabilities was placed, be accepted.

(e) That all notes, properties, and securities which said board of trustees placed in the No. 3 or doubtful class remain the property of the old institution.

(f) That all interest on existing loans as of December 19, 1907, be computed to February 15, 1908, and that the amount of such accrued interest be placed to the credit of the old institution on the books of the new corporation, and that the same be payable on or before December 31, 1908.

(g) That should James W. Hill and R. C. Wood not take the full forty-four thousand dollars in stock in the new corporation, the balance of the amount not so taken to be paid to them not [943] later than July 1st, 1908.

(h) That the proposition of Captain E. T. Barnette to leave on deposit with the new corporation the sum of two hundred thousand dollars, without in-

terest for one year, be accepted, and that it be the understanding that such deposit will secure said new corporation against any adverse decision of the Court in the Caustens vs. Barnette suit in so far as such decision may decrease the value of the Gold Bar Lumber Company property as accepted by the present board of trustees.

(i) That the officers of the new corporation be a president, vice-president, second vice-president, cashier, assistant cashier, treasurer and secretary.

(j) That the number of the board of directors be twelve, four to be elected for six months, four for twelve months, and four for eighteen months or until their respective successors are duly elected and qualified.

(k) That dividends be declared semi-annually on June 30 and December 31.

V.

That said report was, on January 6th, 1908, submitted to said proposed incorporators, and at said meeting the said report was read, and passed on section by section as read, and on motion duly made and carried was adopted and ordered kept as a part of the records of said meeting.

VI.

That at said meeting a subscription list, a copy of which is set forth in paragraph 3 of the amended complaint in this cause, was presented and signed by said proposed incorporators, setting forth the amount for which each respectively subscribed. [944]

VII.

That at said meeting it was also agreed on behalf of the Fairbanks Banking Company, a copartnership, that said partnership would turn over to said corporation the property of said Fairbanks Banking Company, a partnership, on the terms specified in said report, and said proposed incorporators in behalf of said proposed corporation, in consideration thereof, agreed to assume the liabilities of said partnership.

VIII.

That said Fairbanks Banking Company, a corporation, became such on the 21st day of January, 1908. That on the 8th day of February, 1908, a meeting of the subscribers of the capital stock of the Fairbanks Banking Company was held for the purpose, among others, of obtaining notes of the subscribers for the stock subscribed by them, and, at said meeting, said stock notes were subscribed by said subscribers of stock and delivered to said corporation.

That at the time of said meeting the Articles of Incorporation of said Fairbanks Banking Company had not been received from the State of Nevada, and for the purpose of expediency it was deemed advisable to elect a board of directors, and twelve directors were elected at said meeting, and it was agreed that said board of directors should act as such until the arrival of the Articles of Incorporation, when a formal meeting would be held and proper by-laws be adopted.

IX.

That said Articles of Incorporation did not arrive

in Fairbanks until sometime in the month of March, 1908, and immediately thereafter a meeting of the stockholders of the Fairbanks Banking Company, a corporation, was called, and at said meeting said stockholders, among other things, adopted [945] by-laws and elected a board of directors, and also passed a resolution to the effect that the matter of taking over the property of the Fairbanks Banking Company, a partnership, be left to the board of directors.

That at said meeting of the stockholders, the notes made and executed by the subscribers for stock upon the 8th day of February, 1908, were submitted to said stockholders, and the person who had subscribed for stock were declared to be stockholders of said corporation.

X.

That immediately after the adjournment of said stockholders meeting, the board of directors met and organized by the election of a president, vice-president, cashier, assistant cashier, secretary and treasurer, and at said meeting it was moved and duly seconded and carried "that the directors ratify the arrangement as to the taking over of the assets, property and business, and liabilities, of E. T. Barnette, James W. Hill, and R. C. Wood, upon the terms and conditions set forth in the minutes of the meeting of subscribers held January 5, 1908," which said terms and conditions are set forth in paragraph 5 of these findings.

XI.

That at said meeting of the directors, a resolution

was passed that the executive committee theretofore appointed at the meeting of the board of directors be empowered to see that all papers and transfers be made properly by the officers of the old Fairbanks Banking Company, a partnership, and that such transactions be legally carried out.

XII.

That thereupon said executive committee met and went over the resources and liabilities of said Fairbanks Banking Company, a [**946**] partnership, and instructed the attorneys of said corporation to prepare the necessary transfers conveying the property of said Fairbanks Banking Company, a partnership, to the corporation upon the terms and conditions set forth in the minutes of the meeting of January 5, 1908, save and except that certain notes which were then in existence were not to be turned over to the new corporation which thereby reduced the amount of shares of stock to be issued to said copartners.

XIII.

That at said meeting held by the proposed stockholders of said corporation on January 6, 1908, it was believed by all present that the organization of the Fairbanks Banking Company, a corporation, could be perfected by February 15, 1908, and that upon said date said corporation could take over the affairs of the partnership. That it was then agreed, that as the expenses of operating the bank from that date up to the time of taking over the affairs of the partnership by the corporation would fall on the partnership, that by reason thereof said partnership

should be entitled to all interest on existing loans as of December 12, 1907 until the affairs of the partnership were turned over to the corporation, and at said meeting it was agreed and declared that said copartnership should be entitled to interest on existing loans as of date December 12, 1907 up to the 15th day of February, 1908.

XIV.

That at the meeting of the directors held on the 12th day of March, 1908, the matter of allowing the copartnership accrued interest up to March 16, 1908, when it was contemplated that the corporation would take over the business of the partnership, was taken up and discussed, and at said meeting it was agreed that all interest on existing loans as of December **[947]** 12, 1907 be computed to March 15, 1908, and that the amount of such accrued interest be placed to the credit of the partnership on the books of the corporation, and that the same be payable to said partnership on December 31, 1908.

XV.

That thereafter, to wit, on the 23d day of March, 1908, and in accordance with said understanding and agreement between said copartnership and said corporation as to said accrued interest, the said corporation credited the partnership with the amount of said interest, to wit, the sum of $39,642.81, and the same was thereafter paid to the members of said partnership by said corporation, in accordance with the terms of said agreement.

XVI.

That during all the negotiations heretofore men-

tioned the defendant R. C. Wood was not in Alaska, and was either in the State of California or the State of Washington. That said Wood's name was signed to the original subscription list, without his knowledge, by E. T. Barnette, and with the understanding of all the subscribers that it was optional with the said R. C. Wood on his return to Fairbanks, Alaska, to elect either to take stock in the new corporation, or to receive money for the amount of stock to which he was entitled in lieu thereof.

XVII.

That in accordance with the directions of the board of directors made upon the 12th day of March, 1908, to the executive committee, the executive committee proceeded to have the necessary papers and transfers made out conveying the property of the partnership to the corporation on the terms stated in the resolutions of January 5, 1908, and requested that the then attorneys of [948] the bank prepare the necessary papers for that purpose. That in compliance with said request, the said attorneys undertook to draw up an agreement stating the true terms and conditions of said sale and transfer, which is the agreement attached to plaintiff's said amended complaint and marked exhibit 1. That said agreement, through the mutual mistake of the partners and corporation, and without the fault of either, failed to set forth truly all the terms and conditions of the agreement between said Fairbanks Banking Company, a copartnership, and the corporation, in this; first, that said agreement failed to reserve to said copartners the accrued interest on all loans in existence on the

12th day of December, 1907, up to the 15th day of March, 1908, and second, in that it failed to embody the option given to said James W. Hill and R. C. Wood either to take stock for their portion of the surplus property of the partnership or to take money, and that in the event of their desire to take money that the amount should be paid to them not later than July 1, 1908.

XVIII.

That, with said exceptions, said agreement attached to plaintiff's amended complaint and marked exhibit 1 fully sets forth the terms and conditions agreed on and entered into between the Fairbanks Banking Company, a copartnership, and the corporation.

XIX.

That the value placed upon said assets of the partnership was the value placed thereon by the stockholders, and that the resolution of the stockholders of March 12, 1908 authorizing the directors to take over such assets contemplated only the execution of the formal papers necessary for the purposes of the transfer, and not that the directors should exercise their individual judgment in determining the value of such assets. **[949]**

XX.

That in accordance with the true agreement had between the copartnership and the corporation, the Fairbanks Banking Company, a corporation, issued to E. T. Barnette 260 shares of the capital stock of said corporation, and to James W. Hill 130 shares thereof, but no stock was ever issued or delivered to

said R. C. Wood. That said R. C. Wood returned to Fairbanks, Alaska, on or about the 14th day of April, 1908, and at once notified the said corporation of his election to take money in lieu of stock, and at said time, and after reading said agreement of March 16, 1908, being exhibit 1 attached to plaintiff's amended complaint, refused to sign the same for the reason that in said agreement it set forth that he had subscribed for stock. That at said time it was agreed between the said R. C. Wood and the said corporation that he should have the right to take cash instead of stock up to July 1, 1908, and at said time there was shown to said Wood by said corporation the report of the committee of January 5, 1908 and the minutes of the corporation of March 12, 1908.

XXI.

That said Wood signed the said agreement of March 16, 1908, marked exhibit 1 attached to plaintiff's amended complaint, with the distinct understanding on his part and of the Fairbanks Banking Company, a corporation, that said report and minutes reserved to him the right to take money in lieu of stock; and it was never contemplated or understood by the said R. C. Wood or by the said corporation that by signing said agreement he would waive any right to take money in lieu of his stock. [950]

XXII.

That said Wood on or about the 17th day of April, 1908 entered upon his duties as cashier of said corporation, and continued as such cashier up until the 29th day of June, 1908.

XXIII.

That the board of directors and officers of said bank, in paying the money to said R. C. Wood, merely carried out the terms of the agreement entered into between said Wood and said corporation.

XXIV.

That the said sum of $39,642.81 placed to the credit of said copartnership on the books of the corporation on March 23, 1908, and thereafter, and upon the 31st day of December, 1908, paid to said partners, was done in accordance with the terms of the agreement made and entered into between the copartnership and the proposed incorporators on January 6, 1908, save and except that the time thereof was subsequently extended by the board of directors from the 15th day of February, 1908 to the 15th day of March, 1908.

XXV.

That the acquisition and purchase by the corporation of the assets and business of the Fairbanks Banking Company, a copartnership, was done by the stockholders of said corporation, and that the agreement entered into between the Fairbanks Banking Company, a partnership, and the proposed incorporators was long prior to the election of said board of directors, and said board of directors in authorizing the taking over of the property of said copartnership on the terms set forth in said agreement were carrying out the instructions of the stockholders, and such act was a ratification of the arrangement entered into between the [951] proposed incorporators of said corporation and the Fairbanks Banking Company, a partnership.

XXVI.

That said directors of said corporation, in taking over the assets and liabilities of said copartnership, acted in good faith and after careful inquiry and investigation had been made to determine the actual value of the assets of said copartnership.

XXVII.

That at the time of the purchase of the Washington-Alaska Bank, a corporation organized and existing under the laws of the State of Washington, and engaged in a general banking business in Fairbanks, Alaska, the stock of said corporation was worth the sum of $250, 000, and the directors of said Fairbanks Banking Company, a corporation, in the purchase and acquisition of the stock of said Washington-Alaska Bank acted honestly and in good faith, and did not pay an excessive valuation for the same.

XXVIII.

That in the month of May, 1909, the said Washington-Alaska Bank of Washington, and the Fairbanks Banking Company, purchased the entire capital stock of the First National Bank of Fairbanks, Alaska, for the sum of $125,000, and at said time the said Washington-Alaska Bank and the said Fairbanks Banking Company gave to the defendant R. C. Wood an option to purchase said stock of first National Bank for the sum of $125,000 at any time during the month of May, 1910. That upon said date, said Wood and the defendant McGinn purchased said stock under said option and paid said banks therefor the sum of $125,000, and said stock **[952]** was at that time transferred and delivered to them.

XXIX.

That the purchase of said stock of the First National Bank by the said Washington-Alaska Bank and the Fairbanks Banking Company was of advantage to said banks; and that no damage resulted from the giving of said option and the sale of said First National Bank stock to said Wood and McGinnnor was the same fraudulent or illegal.

That the only director now before the court, who was a member of the board of directors during all of the foregoing transactions, is the defendant John A. Jesson. That the defendants James W. Hill and R. C. Wood were not members of the board of directors.

XXX.

That the Articles of Incorporation of said corporation authorized and empowered said corporation, among other things,

> To buy and sell gold and silver bullion, foreign coin, stocks, bonds and all other property, real and personal, and to do any business and exercise any powers incident to the banking business, or necessary or proper to the furtherance and attainment of the purposes of said bank.

XXXI.

That subdivisions 5 and 6 of Article xii of the bylaws of said corporation, adopted at the stockholders meeting held March 12, 1908, provided that all issued and outstanding stock of the company that may be donated to, or purchased by, the company, or which shall revert by reason of failure to pay for the same, shall be treasury stock, and shall be held subject to

the disposal of the action of the board of directors. Said stock shall neither vote nor participate in dividends while held by the [953] company. The board of directors shall be given the first option to purchase for the corporation the stock of any stockholder, and shall be entitled to purchase the same provided said board of directors shall offer to pay to said stockholder the same amount as he might obtain from any other person.

XXXII.

That on the 14th day of September, 1908, the executive committee of the said Fairbanks Banking Company, consisting of Barnette, President, Hill, vice-president, Dusenbury, cashier, and directors Jonas, John Jesson and Ryan, passed a resolution to the effect that said corporation would not take over any more stock of the stockholders, which said resolution of the executive committee was approved and ratified by the board of directors on October 14, 1908, the directors present at said meeting being: Hill, Peoples, Yarnell, Robinson, Ryan, Jonas and Jesson, and also the said Dusenbury was present.

XXXIII.

That on the 18th day of September, 1908, Oscar Goetz was the owner of ten shares of the outstanding capital stock of said corporation, and upon said date said stock, without the knowledge, consent, approval or acquiescence of said board of directors, and without their fault, and in violation of the resolutions hereinbefore in the preceding paragraph set forth, was cancelled by J. A. Jackson, assistant cashier of said bank, and the sum of $1,000 paid to said Goetz

out of the funds of said bank, and said stock debited to treasury stock. [954]

XXXIV.

That on the 18th day of September, 1909, the said J. A. Jackson, assistant cashier, without the knowledge, consent, approval or acquiescence of said board of directors, and without any fault on their part, and in violation of said hereinbefore mentioned resolution of the executive committee, debited treasury with the amount of G. A. Vedin's stock $500. That at said time the said Vedin's name did not appear as a stockholder in the books of said bank, nor had any stock been issued to him, nor had he paid any money for or on account of any stock of said bank; and that no money was paid to said Vedin for or on account of said transaction.

XXXV.

That on the 24th day of October, 1908, B. R. Dusenbury, cashier of said bank, without the knowledge, consent, approval or acquiescence of said board of directors. and without any fault on their part, and in violation of said hereinbefore mentioned resolutions of the executive committee and board of directors, debited treasury stock on account of McDonnell stock in the sum of $200.00. That at said time the said McDonnell's name did not appear as a stockholder in any of the books of said corporation, nor had any stock been issued to him, nor had he paid any moneys whatsoever for or on account of any of the stock of said bank. And that no money was paid to said McDonnell for or on account of said transaction.

XXXVI.

That upon the 18th day of November, 1908, Strandberg Brothers were the owners of 100 shares of the outstanding capital stock of said Fairbanks Banking Company, Emma Strandberg was the owner of 10 shares, and B. E. Johnson was the owner of 10 shares. [955]

That said stock was taken in part payment of a loan that the bank had theretofore made to said Strandberg Brothers and said Johnson, who were mining copartners, and the bank also received at said time the further sum of $4000 in cash, which fully paid said loan. That said transaction amounted to the taking of stock for a pre-existing debt, rather than the purchase of stock by the board of directors. That said directors believed at said time that said loan was precarious; and said directors, in taking said stock in partial satisfaction of said loan, did so in good faith and believing it to be for the best interests of the corporation.

XXXVII.

That upon the 12th day of January, 1909, the said J. A. Jackson, without the knowledge, consent, approval or acquiescence of the board of directors, and without any fault on their part, and in violation of said hereinbefore mentioned resolutions, debited treasury stock on account of F. E. Johnson's stock in the sum of $200. That at said time the said Johnson's name did not appear as a stockholder in the stock books of said corporation, nor had any stock been issued to him, nor had he paid any moneys for or on account of any stock of said corporation, bank;

and no money was paid to said F. E. Johnson for or on account of said transaction.

XXXVIII.

That on the 3d day of February, 1909, at a meeting of the executive committee of said bank, it was again resolved that the officers of said bank be directed to say that "the corporation did not desire to buy in its stock at present", which said resolution of the said executive committee was thereafter and on [956] to wit, the 13th day of February, 1909, approved and ratified by the said board of directors.

XXXIX.

That upon the 9th day of February, 1909, John Clifford was the owner of two shares of the outstanding capital stock of said corporation, and upon said date the said B. R. Dusenbury, cashier of said bank, without the knowledge, consent, approval or acquiescence of said board of directors, and without any fault on their part, and in express violation of the resolutions hereinbefore set forth, cancelled said stock, and debited treasury stock with the sum of $200, and said Dusenbury paid the said Clifford out of the funds of said bank the said sum of $200.

XL.

That upon February 19, 1909, George Jestel was the owner of 5 shares of the outstanding stock of said corporation, and upon said date applied to said bank to purchase the same. That at said time, the said board of directors passed a resolution to the effect that the matter of taking over the Jestel stock be left to the officers of said bank, and, upon the 19th day of February, 1909, the officers of said bank cancelled

the stock of said George Jestel, debited treasury stock with said sum of $500, and paid to the said Jestel out of the funds of said bank the said sum of $500.

XLI.

That on the 15th day of March, 1909, H. B. Parkin, who was the owner of 10 shares of the outstanding capital stock of said bank, and Oscar Tackstrom, who was the owner of 5 shares of the said outstanding capital stock, requested the executive committee of said bank to buy their stock. [957]

That said executive committee thereupon again announced its policy, by resolving "It was the sense of the meeting that the bank observe the rule established at a previous meeting of the board wherein it was declared not to buy in any more stock," which said resolution was approved and ratified by the board of directors at said meeting held April 12, 1909, at which meeting of the directors the following officers and directors were present: Barnette, Claypool, Hill, Jesson, Robinson, Yarnell, Brumbaugh, Peoples and Dusenbury.

XLII.

That upon the 10th day of June, 1909, Hard & McConnell were the owners of 10 shares of the outstanding capital stock of said corporation, and upon said date said stock, without the consent, knowledge, approval or acquiescence of the board of directors, and without any fault on their part, and in violation of the resolutions hereinbefore set forth, which were all well known to the officers of said bank, was cancelled by J. A. Jackson, assistant cashier, and the

sum of $1,000.00 was credited to the deposit account of said Hart & McConnell on the books of said bank and said stock debited to treasury stock.

XLIII.

That upon the 21st day of August, 1909, Louis and Oscar Enstrom were the owners of 10 shares of the outstanding capital stock of said Fairbanks Banking Company, and upon said date the said stock, without the knowledge, consent, approval or acquiescence of the board of directors, and without any fault on their part, and in violation of the resolutions hereinbefore set forth, was cancelled by B. R. Dusenbury, its cashier, and the sum of $1,000 was placed to the credit of said Louis and Oscar Enstrom on the books of said bank, and said stock debited to treasury stock. **[958]**

XLIV.

That in the month of May, 1909, H. B. Parkin, who was the owner of 10 shares of the outstanding capital stock of said corporation, sold his stock to B. R. Dusenbury, cashier, and the said Dusenbury paid therefor the sum of $1,000. That said stock was not transferred on the books of said company to said B. R. Dusenbury, but remained on the books in the name of said H. B. Parkin. That thereafter some officer of said bank, without the knowledge, consent, approval or acquiescence of said board of directors, and without any fault on their part, made a memorandum note for the sum of $1,000.00 on account of the Parkin stock, to which said memorandum note some officer of said bank signed the name of D. Michie; that thereafter, and on the 28th day of October, 1909,

J. A. Jackson, then cashier, without the knowledge, consent or approval or acquiescence of said board of directors, and without any fault on their part, and in express violation of the resolutions which had theretofore been adopted by said board of directors, of which the said J. A. Jackson had full knowledge, cancelled the said memorandum note, and debited treasury stock with the sum of $1,000.

XLV.

That upon the 28th day of October, 1909, the said J. A. Jackson, cashier, without the knowledge, consent, approval or acquiescence of the board of directors, and without any fault on their part, and in violation of the said hereinbefore mentioned resolutions of which the said Jackson had full knowledge, debited treasury stock on account of one Alex Cameron with $100.00, and also debited treasury stock $200 on account of Edith McCormick, and also debites treasury stock on account of J. W. McCormick in the sum of $200. That at said time the said Cameron, and the said **[959]** McCormicks' names did not appear as stockholders in the stock books of said corporation, nor had any stock been issued to them, nor had they paid any money whatsoever for or on account of any stock of said bank; and that no money was paid to said Cameron or to said McCormicks for or on account of said transaction.

XLVI.

That upon the 10th day of November, 1909, the said J. A. Jackson, cashier, without the knowledge, consent, approval or acquiescence of said board of directors, and without any fault on their part, and

in violation of said hereinbefore mentioned resolutions, of which the said Jackson had full knowledge, debited treasury stock on account of one Francis H. Taylor in the sum of $500; that at said time the said Francis H. Taylor's name did not appear as a stockholder in any of the books of said corporation, nor had any stock been issued to him, nor had he paid any money for or on account of any stock of said bank; and that no money was paid to said Taylor for or on account of said transaction.

XLVII.

That on the 23d day of November, 1909, the said J. A. Jackson, cashier, without the knowledge, consent, approval or acquiescence of said board of directors, and without any fault on their part, and in violation of the hereinbefore mentioned resolutions, debited treasury stock on account of McGowan & Clark stock in the sum of $500. That at said time the said McGowan & Clark's name did not appear as stockholders in the books of said bank, nor had any stock been issued to them, nor had they paid any money for or on account of any of the stock of said corporation; and that no money was paid to said McGowan & Clark for or on account of said transaction. [960]

XLVIII.

That upon the 18th day of January, 1910, Horton & Dunham were the owners of five shares of the outstanding capital stock of said corporation, and upon said date said stock, without the knowledge, consent, approval or acquiescence of said board of directors, and without any fault on their part, and in express

violation of the resolutions hereinbefore mentioned, was cancelled by J. A. Jackson, cashier, and the same was debited to treasury stock, and the sum of $500 placed to the credit of said Horton & Dunham on the books of said bank. That at said time the said Horton & Dunham were indebted to said Fairbanks Banking Company.

XLIX.

That for several years prior to the 13th day of October, 1910, the First National Bank of Fairbanks was engaged in the banking business in the town of Fairbanks, and ever since on or about the first day of May, 1910, the principal stockholders of said bank were R. C. Wood and John L. McGinn, and said bank was a competing bank with the Washington-Alaska Bank, formerly the Fairbanks Banking Company, and the competition was extremely keen between said banks.

L.

That John L. McGinn was a stockholder of the Washington-Alaska Bank, formerly the Fairbanks Banking Company, and was the owner of 100 shares of the outstanding capital stock of said Washington-Alaska Bank, of the par value of $10,000.

LI.

That a short time prior to the 13th day of October, 1910, John L. McGinn, as a stockholder of the Washington-Alaska Bank, formerly the Fairbanks Banking Company, demanded the right to **[961]** inspect its books and papers, and threatened that, unless this right was granted him immediately, to make application for an order permitting him to do so and

for the appointment of a receiver of the said Washington-Alaska Bank. That the directors of the Washington-Alaska Bank, fearing that information obtained by such an investigation would be used by said McGinn in promoting the interests of the First National Bank in its business, and that if such information was refused and any litigation was started it would impair public confidence in the Washington-Alaska Bank and perhaps start a run of its customers and depositors on said bank, acting under this belief, authorized the cashier to loan a purchaser sufficient funds to pay for the stock of said McGinn; one of the directors stating at said time that he had a purchaser who would be willing to purchase said stock for the sum of $6,000, but it would be necessary for him to borrow money to complete said purchase; that, as the matter was urgent and the purchaser was not immediately available, the cashier purchased the stock in his own name and gave his note to the bank for the amount thereof and paid to said John L. McGinn the sum of $6,000.00 for his 100 shares of capital stock. That thereafter, and on or about the 25th day of October, 1910, said cashier, without the knowledge of any of the directors, cancelled his note and charged the amount thereof to the bank, and surrendered the stock to the bank, and the stock was thereafter held, with other treasury stock of the company.

LII.

That upon the 13th day of October, 1910, the director, George Preston, by reason of sickness of his family, was quarantined and unable to attend the

meeting of the board of directors held on said day, and was not present thereat, and knew nothing of the action taken at the meeting of said board. **[962]**

LIII.

That at the time of the taking over of all of the stock hereinbefore mentioned and in the amended complaint mentioned, the assets of said corporation exceeded its liabilities, and the earnings and net profits on hand greatly exceeded the par value of the stock so surrendered, cancelled, and returned to the treasury stock of said corporation.

LIV.

That on the 21st day of September, 1909, the assets of said corporation, not including the interest which had been earned but not paid and which was not carried as an asset, exceeded its liabilities in the sum of $23,032.03.

LV.

That on the 28th day of October, 1909, the assets of said corporation, not including interest which had been earned but not paid and which was not carried as an asset, exceeded its liabilities in the sum of $26,857.68.

LVI.

That on the 10th day of November, 1909, the assets of said corporation, not including interest which had been earned but not paid and which was not carried as an asset, exceeded its liabilities in the sum of $8,896.75.

LVII.

That on the 23d day of November, 1909, the assets of said corporation, not including interest which had

been earned but not paid and which was not carried as an asset, exceeded its liabilities in the sum of $29,890.74.

LVIII.

That on the 18th day of January, 1910, the assets of said corporation, not including interest which had been earned, but [963] not paid and which was not included or carried as an asset, exceeded its liabilities in the sum of $11,984.63.

LIX.

That it has not been shown that the creditors, who were existing at the time of the surrender of said stock and the cancellation there as hereinbefore set forth, have not been paid in full by said Washington-Alaska Bank of Nevada, save and except that on July 1, 1908, there was existing creditors, who have not since been paid in full, to the amount of $4,000, and of said sum one-half thereof has since been paid by the receiver.

LX.

That at the time of the surrender and cancellation of said stock in the manner hereinbefore set forth, the directors honestly and in good faith believed that they had a right to purchase and take back the stock of said corporation, and were advised by the attorneys of said bank that they had such right.

LXI.

That at the time of the surrender and cancellation of said stock in the manner hereinbefore set forth, the directors honestly and in good faith believed, and had a right to believe, that the assets of said bank exceeded its liabilities, and that there were net prof-

its which greatly exceeded the par value of the stock so surrendered and cancelled.

LXII.

That all of said stock so debited to treasury stock was thereafter carried as an asset of the corporation, and it was not the intention by said transactions to reduce the capital [964] stock of said corporation or to retire the same; but, on the contrary, it was the intention to reissue the same to others.

LXIII.

That on the 24th day of March, 1909, the Fairbanks Banking Company, in compliance with the laws of the Territory of Alaska in regard to foreign corporations doing business therein, filed and caused to be filed with the clerk of the United States District Court at Fairbanks, Alaska, a statement showing the amount of the outstanding capital stock of said corporation, and said statement upon said date showed that the outstanding capital stock of said corporation was of the par value of $173,600.

LXIV.

That on September 14, 1909, the Fairbanks Banking Company, in compliance with the laws of the Territory of Alaska in regard to foreign corporations doing business therein, filed and caused to be filed with the Clerk of the United States District Court at Fairbanks, Alaska, a statement showing the amount of the outstanding stock of said corporation, and said statement showed that upon said date the outstanding capital stock of said corporation was of the par value of $172,600.

LXV.

That on September 10, 1910, the Fairbanks Banking Company, in compliance with the laws of the Territory of Alaska in regard to foreign corporations doing business therein, filed and caused to be filed with the Clerk of the United States District Court at Fairbanks, Alaska, a statement showing the amount of the outstanding stock of said corporation, and said statement upon said date showed that the outstanding capital stock of said corporation was of the par value of $169,600. **[965]**

LXVI.

That the end of fiscal year of the Washington-Alaska Bank of Washington, and of the Fairbanks Banking Company was the 31st day of December of each year, and at said time it had been the custom and practice of said Washington-Alaska Bank and said Fairbanks Banking Company to charge off all debts due said banks that in the judgment of their officers were bad and uncollectible and which had not been charged off during said fiscal year.

LXVII.

That said bad debts due to the bank and so charged off were not, after said time, carried as an asset of said bank; and, after said bad debts had been deducted from the assets, any profits that were shown to exist, after the deduction of all liabilities including outstanding stock, was placed in the undivided profit account, and was so carried until the end of the next fiscal year unless a dividend was declared upon the same or bad debts charged against the same during the next succeeding fiscal year.

LXVIII.

That at the end of the fiscal year of 1909, R. C. Wood, who was then the president and manager of the First National Bank, and also acting as advisory manager of said Washington-Alaska Bank and Fairbanks Banking Company, requested George Wesch, then cashier of the Washington-Alaska Bank, to make a list of the loans and discounts of said bank that he considered bad and uncollectible. That said Wesch thereupon prepared a list of all the said loans and discounts due said bank that he considered bad and uncollectible, and presented the same to said R. C. Wood, and thereupon the said Wood and Wesch went over said list and arrived at the conclusion that the same included all the loans and discounts due said bank that were then bad and uncollectible, the **[966]** same amounting to the sum of $8,599.59. That said loans and discounts due said bank were then and there, to wit, on December 31, 1909, charged off and no longer carried as an asset of said bank; and, after said bad loans and discounts were so charged off, there still remained undivided profits for the fiscal year ending December 31, 1909, amounting to the sum of $56,106.97.

LXIX.

That the said George Wesch was and is a man of high standing in this community, a banker of experience, capable and honest, and well acquainted with the securities of said bank and the standing of its debtors.

LXX.

That the said R. C. Wood was a man of high stand-

ing in the community, the president of the First National Bank, a banker of experience, and well acquainted with the conditions of said Washington-Alaska Bank, and of the securities held by it for loans made by, and due to, said bank.

LXXI.

That the said R. C. Wood, immediately after his appointment as advisory manager of said banks, prepared a record of all the loans and discounts of said Washington-Alaska Bank and said Fairbanks Banking Company, which said record contained the names of the debtors, the amounts due the said Washington-Alaska Bank and Fairbanks Banking Company, and a description and the location of all property, real and personal, given to secure the loans made by said banks, which said record ever since the month of May, 1910, has been a record of said Fairbanks Banking Company, and is now in the possession of the receiver thereof. [967]

LXXII.

That said record-book so containing the names of the debtors of said Washington-Alaska Bank and the Fairbanks Banking Company, and a description and location of the properties given to secure said debts, although in the possession of the present receiver from the date of his appointment, was never examined by him, and the securities mentioned and described in said book given to secure loans, were not known to him to be in existence.

LXXIII.

That at the end of the fiscal year 1909, the said R. C. Wood, requested J. A. Jackson, cashier of the

Fairbanks Banking Company to make out a list of loans and discounts of said Fairbanks Banking Company that he considered bad and uncollectible. That said Jackson thereupon prepared a list of all said loans and discounts due said bank that he considered bad and uncollectible and presented the same to said R. C. Wood, and thereupon the said Wood and Jackson went over said list and arrived at the conclusion that the same included all the loans and discounts due said bank that were then bad and uncollectible, the same amounting to the sum of $24,937.37.

That said loan and discounts due said bank were then and there, to wit, on December 31, 1909, charged off and no longer carried as an asset of said bank; and, after said bad loans and discounts were so charged off, there still remained undivided profits for the fiscal year ending December 31, 1909, amounting to the sum of $9,881.78.

LXXIV.

That the said J. A. Jackson was and is a man of high standing in the community, a banker of experience, capable and honest, and well acquainted with the securities of said bank, and the standing of its debtors. **[968]**

LXXV.

That at the meeting of the board of directors of said Fairbanks Banking Company held on January 12, 1910, statements of the condition of the said Washington-Alaska Bank of Washington and the Fairbanks Banking Company as of date December 31, 1909, after said bad debts hereinbefore mentioned

had been charged off, were presented by the officers of said banks to said board of directors; and, after the same had been discussed and examined by said directors, the same were ordered filed. That said statement showed that the undivided profits of the Washington-Alaska Bank for the year ending December 31, 1909, after deducting what the officers of said bank regarded to be all of its bad loans and discounts, was the sum of $56,106.97.

That said statement showed that the undivided profits of the Fairbanks Banking Company for the year ending December 31, 1909, after deducting all the bad debts, was the sum of $9,881.78.

LXXVI.

That upon the 12th day of April, 1910, the directors of the Washington-Alaska Bank declared a dividend of $50,000.

LXXVII.

That said dividend of the Washington-Alaska Bank of Washington, to wit, $50,000, was paid to its stockholder the Fairbanks Banking Company; $25,000 of which said sum was ordered by the directors to be placed to the credit of the undivided profit account of said Fairbanks Banking Company, and the other $25,000 was directed to be credited on the amount for which said Fairbanks Banking Company was carrying the stock of said Washington-Alaska Bank. [969]

LXXVIII.

That after said sum of $25,000 had been added to said undivided profit account of said Fairbanks Banking Company, the undivided profit account of

said bank at said time amounted to the sum of $34,-828.55.

LXXIX.

That at the date of the declaration of said dividend, and after the adding of said sum of $25,000 to the undivided profit account, the books of said company showed that the undivided profit account amounted to the sum of $34,828.55, and the directors at said time honestly and in good faith believed that the undivided profit of said Fairbanks Banking Company was said sum of $34,828.55, and said directors were so advised by the officers of said bank.

LXXX.

That the profit of said Washington-Alaska Bank, and Fairbanks Banking Company, and First National Bank for the year ending December 31, 1909, was the sum of $131,332.91; and, after charging off bad debts on said three banks to the amount of $42,836.96, the net profit of said three banks for said year was $88,495.95.

LXXXI.

That the said Fairbanks Banking Company, at the time of the declaration of the dividend, was carrying the stock of the Gold Bar Lumber Company for the sum of $341,949, and said directors in good faith believed, and, from the reports of the officers of said Gold Bar Lumber Company, as well as from the reports of people of high standing who were acquainted with said property and the value thereof, had a right to believe that said property was worth said amount. [970]

LXXXII.

That the advancements made to the Tanana Electric Company by the Fairbanks Banking Company for which two notes of the Tanana Electric Company were given to said bank amounting to the sum of $27,997.38, were authorized and directed by the Scandinavian-American Bank of Seattle, State of Washington, and the said directors, at the time of the declaration of said dividend, believed and had a right to believe that the same was a good and valid claim against the said Scandinavian-American Bank, and a valuable asset of said Fairbanks Banking Company to the amount that the same was carried by them.

LXXXIII.

That said dividend was declared by said directors of said bank in good faith and in the honest belief, and after the exercise of due care, that the undivided profits of said banks amounted to said sum of $34,-828.55, and that the values placed upon the assets of said bank was the true and correct one, and that the amount for which said bank was carrying its assets, and particularly its stocks, loans and discounts, were the true and correct valuation of the same.

LXXXIV.

That the directors of said bank, in making loans of the funds of said bank, acted carefully, honestly, and after careful inquiry and investigation had been made as to the standing of the borrowers and investigation made of the properties which were offered for security, and that said directors were acquainted with the loans and securities of said bank.

LXXXV.

That E. T. Barnette, who is jointly charged with these defendants as to all the wrongs complained of in plaintiff's amended complaint on file herein, was, during the time of all the [971] transactions mentioned in said amended complaint, the president of said Fairbanks Banking Company, afterwards known as the Washington-Alaska Bank, and one of its directors.

LXXXVI.

That at the time of the suspension of the Washington-Alaska Bank of Nevada, the said E. T. Barnette was not within the Territory of Alaska, but shortly thereafter, and in the month of February, 1911, returned to Fairbanks, Alaska, and entered into negotiations with the creditors and depositors of said bank and with the then receivers of said bank, for the purpose of amicably adjusting all suits and causes of action that might exist against him on account of any of the matter and things set forth in plaintiff's amended complaint. [972]

LXXXVII.

That as a result of said negotiations, and in full satisfaction of all the wrongs complained of in plaintiff's amended complaint, the said E. T. Barnette on the 8th of March, 1911, executed an instrument in writing in which he admitted his liability to the creditors and depositors of said bank, and promised and agreed to pay all the depositors and creditors of said bank in full not later than the 18th day of November, 1914, together with interest on all amounts due to creditors and depositors from the 4th day

of January, 1911, until paid.

LXXXVIII.

That Isabelle Barnette was, and is, the wife of the said E. T. Barnette, and the said Isabelle Barnette was desirous of aiding her said husband in the payment of the creditors and depositors of said Washington-Alaska Bank of Nevada, and to that end joined her said husband in the promise to pay all the depositors and creditors of said Washington-Alaska Bank of Nevada on the terms set forth in the preceding paragraph.

LXXXIX.

That said promise was made upon the distinct understanding that no litigation would be instituted against the said E. T. Barnette or others for or on account of any of the matters and things set forth in the amended complaint, and for this purpose, and to prevent any litigation, and as security for the faithful performance of the promises made by said E. T. Barnette and Isabelle Barnette, the said Isabelle Barnette and E. T. Barnette on the 18th day of March, 1911, with the knowledge and consent and approval of this Court, conveyed to the receivers of said bank, and the said receivers by order of this Court accepted the conveyance of title to an improved plantation containing [973] 18,723 acres of land, situate in the Republic of Mexico, and certain improved and income producing business properties and lots situate in the incorporated town of Fairbanks, Territory of Alaska, and certain large interests in valuable association placer claims situate in the Fairbanks Precinct, Territory of Alaska; all

of which properties belonged at the time of said conveyance to the said E. T. Barnette and Isabelle Barnette.

XC.

That the property so conveyed by the said E. T. Barnette and Isabelle Barnette situated in the Republic of Mexico, was, at the time of said coveyance, of the value of $500,000. That at this time, owing to the unsettled conditions in said Republic of Mexico caused by rebellion and open warfare, it is difficult to determine what is the present value of said property situate in said Republic of Mexico, but said property is of great value, but the market value thereof cannot be determined at this time.

XCI.

That the property conveyed by the said E. T. Barnette and Isabelle Barnette in the town of Fairbanks, Territory of Alaska, is of the value of $25,000.

XCII.

That the value of the interest of the said E. T. Barnette and Isabelle Barnette in association placer mining claims situate in the Fairbanks Recording District, Territory of Alaska, and conveyed by them to said receivers is the value of $20,000.

XCIII.

That said receiver has received from said mining properties and said town properties, as rents, royalties and proceeds, up to the present time the sum of $31,400.00. [974]

XCIV.

That in said deed of said property in the Republic of Mexico it is expressly provided that said receiver

may sell all or any part of said land at private sale on or after the 18th day of November, 1914, for the purpose of raising funds with which to pay the claims of the depositors and creditors of said bank then remaining unpaid, and, out of the proceeds thereof, said receiver is directed to pay all the claims of depositors and creditors of said bank then remaining unpaid.

XCV.

That in said deed E. T. Barnette and Isabelle Barnette further authorize and empower said receiver to collect and receive the amount of $226,025 payable on the 18th day of November, 1914, in case of an option given on the 18th day of November, 1909, for the purchase of forty-nine per cent of said property situate in the Republic of Mexico, is exercised by the optionees mentioned in said option by that time, and to apply such sum to the payment of said claims of depositors and creditors of said bank.

XCVI.

That said deed to property situate in the Territory of Alaska also provides for and gives said receiver power to collect and receive all the rents, royalties and proceeds of the property therein described, and to sell said property and to apply the amount so received in payment of said claims of depositors and creditors of said bank at any time when it shall be deemed most advisable to do so by the said E. T. Barnette and Isabelle Barnette and the receiver; but that if said property is not so sold by the 18th day of November, 1914, that said receiver is then authorized to sell said property without the consent of said E. T. Barnette and Isabelle Barnette and to apply the

amount so received in payment of the claims of the creditors and [975] depositors of said Washington-Alaska Bank of Nevada.

XCVII.

That the said receiver holds a large amount of property belonging to said bank, which is of great value and has not been converted into money; and the property so held by him, and the property so conveyed to the receiver by the said E. T. Barnette and Isabelle Barnette, are more than sufficient to satisfy all the claims, demands and obligations of whatsoever nature now existing against said Washington-Alaska Bank of Nevada.

XCVIII.

That the receiver has received as rents, royalties and profits from the property of the said E. T. Barnette and Isabelle Barnette situate in the Territory of Alaska, the sum of $31,400, and that said amount. together with the property conveyed by the said E. T. Barnette and Isabelle Barnette, exclusive of the property situate in said Republic of Mexico, are more than ample to pay all the matters and things charged against these defendants in said amended complaint of plaintiff herein; and that all the wrongs and things charged against these defendants in said amended complaint have, by reason thereof, been fully satisfied and paid.

XCIX.

That the then receivers of the said Washington-Alaska Bank agreed to accept in full satisfaction of all the matters and things set forth in plaintiff's amended complaint and sued on herein, the said

promises and property of the said E. T. Barnette and Isabelle Barnette, and the said E. T. Barnette and Isabelle Barnette made and executed said promises and conveyed [976] said property, in full satisfaction of all suits or causes of action then existing against him on account of any and all matters and things arising from his connection with the said Washington-Alaska Bank of Nevada, and in full satisfaction of all the matters and things set forth in plaintiff's amended complaint; and the said receivers accepted and received said promises and said property in full satisfaction of all claims and causes of action set forth in the amended complaint of the plaintiff herein.

C.

That the defendant John A. Jesson was a director of the Fairbanks Banking Company from the 12th day of March, 1908, until the 4th day of January, 1911.

That the defendant E. R. Peoples was a director of said Fairbanks Banking Company from October 14, 1908, until April 24, 1909.

That the defendant John L. McGinn was a director of said Fairbanks Banking Company from the 14th day of September, 1909, until the 1st day of May, 1910.

That the defendant R. C. Wood was a director of said Fairbanks Banking Company from the 13th day of November, 1909, until the 1st day of May, 1910.

That the defendant Brumbaugh was a director of said Fairbanks Banking Company from the 13th day of March, 1909, to the 12th day of September, 1910.

That the defendant Hill was a director of said Fairbanks Banking Company from the 12th day of September, 1908, until the 1st of October, 1909, when he left the Territory of Alaska for the States.

That the defendant Clark was elected a director of the Fairbanks Banking Company on the 12th day of May, 1910, and thereafter and on June 12, 1910, entered upon the discharge of his duties as such director, and was such director until the suspension [977] of said bank and the appointment of a receiver therefor.

That the defendant George Preston was elected a director of said Fairbanks Banking Company on the 12th day of September, 1910, and in the month of December, 1910, resigned as such director.

That defendant Healey was a director of the Fairbanks Banking Company from June 12, 1910, until the suspension of said bank and the appointment of a receiver therefor.

As conclusions of law, the Court finds:

CONCLUSIONS OF LAW.

I.

That the taking over by the Fairbanks Banking Company, a corporation, of the assets and liabilities of the partnership consisting of E. T. Barnette, James W. Hill and R. C. Wood was done honestly and in good faith, and after said directors had used the diligence in ascertaining and determining the value of the assets and liabilities of said bank.

II.

That the payment of said sum of $13,000 to R. C. Wood by said corporation was done in accordance

with the true terms of the agreement entered into between the said R. C. Wood and the said Fairbanks Banking Company, a corporation.

III.

That the sum of $39,642.81 to said E. T. Barnette, R. C. Wood and James W. Hill for interest on loans that were existing December 12, 1907, up to March 15, 1908, was in accordance with the [978] true intent and spirit of the agreement entered into between the stockholders of said Fairbanks Banking Company, a corporation, and the said copartners; and the said board of directors, in allowing interest as aforesaid, carried out the true intent and spirit of the agreement entered into between the said stockholders and the said copartners.

IV.

That the stock that was surrendered, and taken back by the directors, and of which said directors had knowledge, was taken honestly and in good faith and under the belief of the said directors that they had a right to take back said stock, and that the same was for the best interest of the corporation.

V.

That the balance of the stock so surrendered, and taken back by the officers of said bank, was done without the knowledge, consent, approval or acquiescence of said directors, and there was nothing to charge the said directors with knowledge that its officers were violating the resolutions of the said board of directors not to take back or cancel any stock.

VI.

That the declaration of the dividend by the direct-

ors was done by them honestly and in good faith and under the honest belief that the assets of said corporation exceeded its liabilities in the sum of $34,-828.55, and that there was net profits to said amount; and that said directors believed at said time that the assets were of the value that said corporation was carrying them. [979]

VII.

That the directors of the Washington-Alaska Bank were entitled to place confidence in their cashier, and were not guilty of negligence in connection with the cancellation of the note given by him to the corporation in connection with the purchase of the John L. McGinn stock, and that under the circumstances then existing said directors were justified in purchasing said stock from the said John L. McGinn for the bank, had it become necessary so to do, or in loaning the sum of $6,000.00 to the purchaser thereof; and that in the taking back of said stock said directors acted honestly and in good faith and for the best interest of the corporation.

VIII.

That the directors of said bank had a right to rely upon the honesty and fidelity of their officers, and are not chargeable with any acts that said officers did in violation of the instructions of said board of directors.

IX.

That the allegations of plaintiff's amended complaint are untrue, and the allegations of the defendants' answers are true.

X.

That the plaintiff is not entitled to recover any

judgment whatsoever against any of the defendants Jesson, Hill, Wood, Brumbaugh, McGinn, Peoples, Clark, Healey and Preston, or either of them.

XI.

That defendants are entitled to a decree that the plaintiff recover nothing by this action, and that defendants have judgment for their costs and disbursements. [980]

A. R. HEILIG and
JOHN L. McGINN,

Attorneys for Defendants Wood, Healey, Peoples and McGinn.

McGOWAN & CLARK,

Attorneys for Defendants Peoples, Jesson, Wood, McGinn, Hill, Brumbaugh, Clark, Preston and Healey. [981]

Which Findings of Fact and Conclusions of Law so requested by the defendants the Court refused to make and find as the Findings of Fact and Conclusions of Law in said cause, save and except that the Court made and found as part of the Findings of Fact in said cause paragraphs 3, 4, 5, 6, 7, 8, 9, 30, 31, 32, 36, 38, 41, 50, 51 and 52 of said defendants' request for Findings of Fact, and to the ruling of the Court in refusing to make Findings of Fact as is set forth in paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, 37, 39, 42, 43, 44, 45, 46, 47, 48, 49, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98 and 99 as requested by the defendants, the defendants then

and there excepted to the refusal of the Court to make each, any and all of said requested findings and an exception was then and there allowed by the Court to the refusal to allow, each, any and all thereof.

And to the refusal of the Court to make Conclusions of Law requested by the defendants as set forth in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of said defendants' proposed Conclusions of Law the defendants then and there excepted and a separate exception was allowed by the Court after the refusal to make each, any and all of the same.

That before the Findings of Fact and Conclusions of Law were signed in the above-entitled cause, the defendants duly filed and presented to the Court their objections to the Findings of Fact and Conclusions of Law, as follows: [982]

[Title of Court and Cause.]

Objections to Plaintiff's Proposed Findings of Fact and Conclusions of Law.

BE IT REMEMBERED that upon this 22d day of May, 1914, the defendants Jesson, Peoples, Wood, Hill, Brumbaugh, McGinn, Clark, Preston and Healey, by their respective attorneys, hereby, and before any findings of fact and conclusions of law have been signed by the Judge of this court, object to the proposed findings of fact and conclusions of law requested by the plaintiff herein, as follows:

I.

Said defendants object to said request contained in paragraph II of said request for findings, for the reason that the same is not supported by the evi-

dence, in that the amount of subscribed capital stock of said Fairbanks Banking Company, upon the 16th day of March, 1908, did not amount to said sum of $206,000.00.

II.

Said defendants object to said request as set forth in paragraph III thereof, for the reason that the same is contrary to the evidence, and particularly because the said R. C. Wood never subscribed for 220 shares of the capital stock of said Fairbanks Banking Company, or any shares.

III.

Said defendants object to that portion of paragraph IV of said request for findings, wherein it is stated that said [983] Fairbanks Banking Company was unable to meet its obligations, for the reason that the same is contrary to the evidence in this case, that the evidence discloses that the resources of said bank at that time greatly exceeded its liabilities, but that owing to the financial flurry then existing throughout the United States, said bank was unable to pay all its depositors in cash and on that account was compelled to temporarily suspend its business.

IV.

Said defendants object to that portion of paragraph VIII of said request for findings, wherein it is stated that the said Wood, together with other subscribers were declared to be stockholders of said corporation, for the reason that the same is contrary to the evidence, the evidence disclosing that at said time said directors knew that it was optional with the said Wood up to the first day of July, 1908, to

take said stock or money in lieu thereof, and that that portion thereof wherein it is stated that the said Wood was notified of the result of said meeting of stockholders, by the defendant Hill, is not supported by the evidence.

V.

Said defendants object to that portion of said request for findings numbered 8 which states that said board of directors ordered that stock be issued to Wood in exchange for property to the amount of 220 shares, for the reason that there is no evidence to support the same, and the same is contrary to the evidence.

VI.

The said defendants object to paragraph X of said request for findings, wherein it is stated that the said R. C. Wood, at the time said agreement was signed, was the cashier of said bank, for the reason that same is not supported by the evidence. **[984]**

VII.

Said defendants object to paragraph XII of said request for findings, for the reason that the same is not supported by the evidence.

VIII.

Said defendants object to paragraph XIII of said request for findings, for the reason that the same is contrary to the evidence offered in the above-entitled case, in that it does not appear that the said Wood was fully advised by said Hill, by letters and telegrams, of all the negotiations leading up to the making of said written agreement mentioned therein.

IX.

Said defendants object to paragraph XIV of said

request for findings, for the reason that the same is contrary to the evidence and for the reason that the evidence discloses that at said time the said Wood was not apprised of the true terms of the agreement entered into between said proposed stockholders and the copartnership.

X.

Said defendants object to paragraph XVI of said request for findings, for the reason that the same is contrary to the amended complaint of plaintiff herein, is not supported by the evidence, but is contrary thereto.

XI.

Said defendants object to that portion of paragraph XVII of said request for findings, wherein it is stated that said two notes executed by Tanana Electric Company, in the sum of $27,997.38, depended for their value upon the alleged guaranty of the Scandinavian-American Bank, to make advancements sufficient to cover the same, which said guaranty never had any existence in fact, for the reason that the same is contrary to the evidence in this case, both that offered by the plaintiff [985] and the defendants, and the same is not supported by any evidence; and object to that portion of said finding wherein it is stated that said claim had been repudiated by Scandinavian-American Bank prior to the time said note was accepted by said board of directors and the same was known to the members of said board, for the reason that the same is not supported by any evidence and is contrary to the evidence offered in the above-entitled cause.

XII.

Said defendants object to paragraph XVIII of said request for findings, for the reason that the same is contrary to the evidence offered in the above-entitled cause, and no evidence was offered on the trial in support thereof.

XIII.

Said defendants object to paragraph XX of said request for findings, for the reason that the same is not supported by any evidence offered on the trial of said cause and is contrary to the evidence offered upon said trial; and said defendants particularly object to said portion of said finding wherein it is stated that said stock of the Gold Bar Lumber Company was accepted and paid for at a gross and fraudulent overvalue on the part of said board of directors, in the sum of $75,000.00, for the reason that the same is not a statement of any fact, but a conclusion of law and further that the same is not supported by any evidence introduced upon the trial of said cause; and also particularly to that portion wherein it is stated that at no time during the existence of said bank was said stock worth more than the sum of $266,949, for the reason that there was no evidence offered upon the trial to support the same, and the evidence is contrary thereto.

XIV.

Said defendants object to paragraph XXII of said [986] request for findings, for the reasons that the same is contrary to the evidence and not supported by the evidence given upon the trial of said cause, that the statement therein contained that

the said Wood entered upon his duties as cashier on the 16th day of March, 1908, is untrue, for the reason that said Wood in Seattle, Washington, could not perform the duties of cashier of a bank situate in Fairbanks, Alaska, and that such acts as were done by him in Seattle, in said capacity, were done by special authorization from the board of directors; and said defendants object to that portion of said finding wherein it is stated that the resignation of said Wood was to become effective at the close of business on June 30, 1908, for the reason that same is contrary to the evidence and in violation of the express admissions of the pleadings in this cause, and that the same is irrelevant and immaterial.

XV.

These defendants object to that portion of paragraph XXIV of said request for findings which states that said 130 shares was carried on the books of said bank as outstanding stock, March 16, 1908, to June 30, 1908, for the reason that the same is irrelevant and immaterial and not pertinent to any of the issues of the above-entitled cause, and not supported by any evidence.

XVI.

Said defendants object to paragraph XXV of said request for findings, wherein it is stated that on the 30th day of June, 1908, said certificate was signed by said B. R. Dusenbury as assistant cashier prior to the said resignation of said Wood as cashier became effective, for the reason that it is contrary to the evidence introduced in this case and contrary to the express admissions of the pleadings and not

supported by any evidence, the pleadings showing that said Wood's resignation took effect June 29, 1908. [987]

XVII.

Said defendants object to that portion of paragraph XXVI wherein it is stated that said Wood received on said certificate of deposit the sum of $13,000, for the reason that the same is contrary to the evidence, the said Wood having received for said certificate said amount of $13,000, less the discount which he was compelled to pay on same.

XVIII.

Said defendants object to that portion of paragraph XXIX of said request for findings, wherein it is stated that at the time said certificate of stock was issued the said R. C. Wood was cashier and a member of the executive committee, for the reason that the same is not supported by any evidence and is contrary to the admissions of the pleadings; and said defendants further object to all of said paragraph, wherein it states the names of the members of said executive committee, for the reason that the same is irrelevant and immaterial.

XIX.

Said defendants object to paragraph XXX of said request for findings, for the reason that the same is irrelevant and immaterial and not supported by any evidence offered on the trial of said cause.

XX.

Said defendants object to paragraph XXXIII of said request for findings, for the reason that same is not supported by any evidence offered on the trial

of said cause, but is directly contrary thereto and the same is irrelevant and immaterial; and said defendants object to that portion of said paragraph wherein it is stated that at said time the said R. C. Wood was cashier of said bank, for the reasons hereinbefore assigned, and for the further reason that the same is irrelevant and immaterial. [988]

XXI.

Said defendants object to paragraph XXXIV of said request for findings, in that the amount of the subscribed and outstanding capital stock of said corporation is misstated, for the further reason that the statement that only a small portion of said amount has been paid in in cash is irrelevant and immaterial, that the statement therein contained that all its funds $341,949 was at all times invested in the stock of Gold Bar Lumber Company, being $135,949 in excess of its subscribed and outstanding stock, is not a statement of any fact, but a mere deduction and calculation which is wholly irrelevant and immaterial to any of the issues of this cause; and that the statement therein set forth that the investment of its funds in said stock was the principal trouble of said bank is irrelevant, immaterial to the issues in this case and not supported by any evidence, and not a statement of a fact, but a mere conclusion; and that the further statement in said paragraph that at all times during the existence of said bank it was unable to withdraw said funds from said investment is not supported by any evidence, no evidence being offered upon that point.

XXII.

Said defendants object to paragraph XXXV of

said request for findings, as follows: to that portion thereof wherein it is stated that prior to closing down said Gold Bar Lumber Company had been operated at a loss, for the reason that the same is not supported by any evidence; that the statement contained in said paragraph that in the operation of said mill its standing timber was being consumed and its assets exhausted is irrelevant and immaterial and not pertinent to any of the issues of this cause.

XXIII.

Said defendants object to paragraph XXXVI of said request [989] for findings, for the reason that the same is irrelevant and immaterial and not supported by the evidence offered upon the trial of said cause, but is contrary thereto.

XXXIV.

Said defendants object to that portion of paragraph XXXVIII of said request for findings, wherein it is stated that said bank had no surplus or undivided profits against which the same could be charged, for the reason that the same is not supported by any evidence upon the trial of said cause and is contrary thereto.

XXXV.

Said defendants object to paragraph XXXIX of said request for findings, for the reason that the same is not supported by any evidence or law offered upon the trial of the above-entitled cause, and that same is a conclusion of law.

XXXVI.

Said defendants object to paragraph XLI of said request for findings, for the reason that the same is

a mere conclusion wherein it is stated that the aforesaid were acquiesced in by said board of directors, and the same is not supported by any evidence.

XXXVII.

Said defendants object to that portion of paragraph XLIV of said request for findings, wherein it is stated that said capital stock of said Washington-Alaska Bank was not worth to exceed $175,000.00, for the reason that the same is not supported by the evidence given upon the trial of the above-entitled cause and is directly contrary thereto; and also to that portion thereof wherein it is stated that the purchase of said capital stock was ratified and confirmed by said John A. Jesson, James W. Hilland, John L. McGinn, as members of the board of directors, on the 13th day of September, 1909, for the reason that the same [990] is not supported by the evidence given upon the trial of the above-entitled cause and is directly contrary thereto.

XXXVIII.

Said defendants object to paragraph XLV of said request for findings, for the reason that the same is not supported by any evidence given upon the trial of said cause and is directly contrary thereto.

XXXIX.

Said defendants object to paragraph XLVII of said request for findings, for the reason that the same is not supported by any evidence given upon the trial of the above-entitled cause, but is directly contrary thereto.

XL.

Said defendants object to paragraph XLVIII of

said request for findings, for the reason that the same is not supported by the evidence given upon the trial of the above-entitled cause, but is directly contrary thereto, particularly that portion thereof in which it is said that the same was declared and paid in violation of the laws of the State of Nevada, the same being not the statement of any fact, but a conclusion of law, and particularly that portion thereof, in which it says that the same was in violation of the by-laws of the Fairbanks Banking Company and was wrongful and illegal, for the reason that the same is not the statement of any fact, is not supported by any evidence offered upon the trial of the above-entitled cause, and is a mere conclusion of law.

XLI.

Said defendants object to paragraph LII of said request for findings, for the reason that the same is not supported by any evidence offered upon the trial of the above-entitled cause but is directly contrary thereto.

XLII.

Said defendants object to paragraph LIII of said request [991] for findings, for the reason that the same is argumentative and not the statement of any fact, that the same and the whole thereof is not supported by any evidence given upon the trial of said cause and also embraces within it matters expressly admitted by the pleadings upon which no finding is necessary.

XLIII.

Said defendants object to paragraph LIV of said request for findings, for the reason that there is no

evidence offered upon the trial to support the same and same is directly contrary thereto.

XLIV.

Said defendants object to paragraph LV of said request for findings, for the reason that there is not a scintilla of evidence in the above-entitled cause that the Tanana Electric Company note had been litigated with the Scandinavian-American Bank and that a decision denying the existence of said alleged guaranty was ever rendered.

XLV.

The defendants object to the conclusions of law requested by the plaintiffs, Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 for the reason that the same are not supported by the findings of fact or the evidence offered upon the trial of the above-entitled cause, and are contrary to law.

Fairbanks, Alaska, May 22, 1914.

JOHN L. McGINN,
A. R. HEILIG,
McGOWAN & CLARK,
Attorneys for Said Defendants. [992]

[Title of Court and Cause.]

Exceptions to Findings and Conclusions Made by the Court, and to Refusal of the Court to Give Defendants Requested Findings and Conclusions.

BE IT REMEMBERED that upon the 11th day of June, 1914, the Judge of the above-entitled court made and filed with the clerk of said court its find-

ings of fact and conclusions of law in the above-entitled cause, and that thereupon the defendants J. A. Jesson, E. R. Peoples, R. C. Wood, James W. Hill, Raymond Brumbaugh and John L. McGinn excepted to such findings of fact and conclusions of law, and to the overruling of the objections of said defendants made thereto prior to the time that said findings of fact and conclusions of law were signed by the judge of the above-entitled court; and also excepted to the refusal of the Court to make findings of fact and conclusions of law as requested by said defendants as hereinafter more particularly specified.

I.

Said defendants except to paragraph II of the findings of fact so made by the court, which is the same finding requested by the plaintiff and numbered II in plaintiff's requested findings of fact and conclusions of law.

II.

Said defendants except to finding number III made by the Court, which is the same as is set forth in plaintiff's requested finding number III to which said defendants had theretofore [993] objected, with the exception that the Court has added to said finding the following: "the name of R. C. Wood being subscribed thereto by said E. T. Barnette"; to which portion thereof so added by the Court these defendants object, and except to the making and finding of the same.

III.

Said defendants except to that portion of finding number XIII made by the Court, and which said

finding was requested by the plaintiff as finding number VIII of plaintiff's requested findings, wherein it is stated that the said Wood, together with other subscribers, were declared to be stockholders of said corporation; and also that portion thereof wherein it is stated that the said Wood was notified of the result of said meeting of stockholders by the defendant Hill.

IV.

Defendants except to that portion of finding number XIV made by the Court, wherein it is stated that the said R. C. Wood at the time said agreement was signed was the cashier of said bank.

V.

Said defendants except to that portion of finding number XIX made by the Court wherein it is stated that the said Wood was fully advised concerning the same by the defendant Hill by letter and telegram.

VI.

Said defendants except to the ruling of the Court overruling the objections of these defendants to paragraph XX of the findings of fact made by the Court, which is the finding number XIV set forth in plaintiff's request for findings of fact. **[994]**

VII.

Said defendants except to finding of fact numbered XXII made by the Court, and to the overruling of the defendant's objections thereto, it being the same finding which is numbered XVI in plaintiff's request for findings of fact.

VIII.

Said defendants except to finding of fact numbered

XXIII made by the Court, and to the overruling of defendant's objections thereto, which is the finding requested by plaintiff as number XVII.

IX.

Said defendants except to findings of fact numbered XXIV so made by the Court, and to the overruling of the defendant's objections thereto, which is the finding numbered XVIII of plaintiff's request for findings of fact.

X.

Said defendants except to finding of fact number XXVII so made by the Court, and to the overruling of defendant's objections thereto, which is the same finding of fact numbered XXII of plaintiff's request for findings of fact.

XI.

Said defendants except to finding of fact number XXIX so made by the Court, and to the overruling of defendant's objections thereto, which is the same finding of fact numbered XXIV in plaintiff's request for findings of fact.

XII.

Defendants except to findings of fact number XXX so made by the Court, and to the overruling of their objections thereto, which is the same finding of fact numbered XXV of plaintiff's request for findings of fact. [995]

XIII.

Said defendants except to finding of fact numbered XXXIV so made by the Court, and to the overruling of defendant's objections thereto, which is the same finding of fact numbered XXIX of plaintiff's request

for findings of fact.

XIV.

Said defendants except to finding of fact number XXXV so made by the Court, and to the overruling of their objections thereto, which is the same finding of fact numbered XXX of plaintiff's request for findings.

XV.

These defendants object and except to finding of fact number XXXVII so made by the Court, for the reason that the same is not supported by the evidence.

XVI.

These defendants except to finding of fact number XXXVIII so made by the Court, and to the ruling of defendant's objections thereto, which is the same finding of fact numbered XXXIII of plaintiff's request for findings of fact.

XVII.

These defendants except to finding of fact number XL so made by the Court, and to the overruling of their objections thereto, which is the finding of fact numbered XXXV of plaintiff's request for findings of fact.

XVIII.

These defendants except to finding of fact number LI so made by the Court, and to the overruling of defendant's objections thereto, which is the same finding of fact numbered XXXVIII of plaintiff's request for findings of fact.

XIX.

These defendants except to finding of fact number

LII so made by the Court, and to the overruling of defendant's objections [996] thereto which is the same finding of fact numbered XXXIX of plaintiff's request for findings of fact.

XX.

These defendants except to finding of fact number LIV so made by the Court, and to the overruling of defendant's objections thereto, which is the same finding of fact numbered XLI of plaintiff's request for findings of fact.

XXI.

These defendants except to finding of fact number LVII so made by the Court, and to the overruling of defendant's objection thereto, which is the same finding of fact numbered XLIV of plaintiff's request for findings of fact.

XXII.

These defendants except to finding of fact number LVIII so made by the Court, and to the overruling of their objections thereto, which is the same finding of fact numbered LIII of plaintiff's request for findings of fact.

XXIII.

These defendants except to finding of fact number LIX so made by the Court, and to the overruling of defendant's objections thereto, which is the same finding of fact numbered LIV of plaintiff's request for findings of fact.

XXIV.

These defendants except to finding of fact number LXI so made by the Court, and to the overruling of their objections thereto, which is the same finding

of fact numbered XLVII of plaintiff's request for findings of fact.

XXV.

These defendants except to finding of fact number LXII so made by the Court, and to the overruling of defendants' objections thereto, which is the same finding of fact numbered XLVIII of plaintiff's request for findings of fact. [997]

XXVI.

These defendants except to finding of fact number LXVI so made by the Court, and to the overruling of defendants' objections thereto, which is the same finding of fact requested by the plaintiff as number LII in plaintiff's request for findings of fact.

XXVII.

Said defendants except to conclusions of law found by the Court, and to each and every thereof, and to the overruling of the said defendants' objections thereto.

And now, in pursuance of justice and that right may be done, the defendants present the foregoing as their Bill of Exceptions in this cause and pray that the same may be settled and allowed and certified by the Judge of this court in the manner provided by law.

McGOWAN & CLARK,
A. R. HEILIG,
JOHN L. McGINN,
Attorneys for defendants Wood, Hill, Peoples, Brumbaugh, McGinn and J. A. Jesson.

Service of a true copy of the foregoing Bill of Exceptions is hereby acknowledged this 6th day of July,

1914, at Iditarod, Alaska, by receipt of a true copy thereof duly certified to be such.

O. L. RIDER,
Attorney for Plaintiff. [998]

[Title of Court and Cause.]

Order Allowing and Settling Defendants' Bill of Exceptions.

BE IT REMEMBERED, that upon the 6th day of July, 1914, the above-named defendants presented the foregoing Bill of Exceptions to the Court for settlement, which said proposed Bill of Exceptions was served and filed within the time allowed by the orders of this Court; and it appearing to the Court from the examination of the proposed Bill of Exceptions that the same contains all the evidence, testimony and exhibits introduced and given upon the trial of said cause in support of and against the allegations and denials of the amended complaint, answer and reply relative to the subscription for taking over, surrender and cancellation of the capital stock of the said Fairbanks Banking Company, by the corporation and the directors thereof, except as to the stock of Strandberg Brothers, B. E. Johnson, Emma Strandberg and John L. McGinn; and also all of the testimony, evidence and exhibits introduced and given upon the trial of said cause in support of and against the allegations and denials of the amended complaint, answer and reply relative to the declaration of the dividend by the directors of the said Fairbanks Banking Company, and the payment

thereof; and also all of the testimony, evidence and exhibits introduced and given upon the trial of said cause in support of and against the further separate and affirmative defense of said defendants wherein it is alleged that there was a complete accord and satisfaction between E. T. Barnette and Isabelle Barnette and the former receivers of the said Washington-Alaska Bank as to all of the matters and things [999] charged in the complaint, and that there was a complete settlement between said parties and a release of the said Barnette of all the matters and things charged against him in the complaint by reason thereof; and also contains all of the evidence, testimony and exhibits introduced and given upon the trial of said cause in support of and against the further separate and affirmative defense of the defendants, wherein it is alleged that the said E. T. Barnette and Isabelle Barnette have fully paid and satisfied all of the wrongs and things charged against these defendants in the complaint, as well as all of the proceedings therein not of record in relation to said above specified matters, and is in all respects true and correct.

NOW, THEREFORE, on motion, IT IS HEREBY ORDERED, that the foregoing pages from one to —— be, and the same is hereby approved, allowed and settled as the Bill of Exceptions in the above-entitled cause and made a part of the record herein; and that the same has been filed and presented within the time allowed by the orders of this Court.

Dated at Iditarod, Alaska, this 6th day of July, A. D. 1914.

F. E. FULLER,
District Judge.

Entered in Court Journal No. 2, page 24, at Iditarod, Alaska.

Entered in Court Journal No. 13, page 24, at Fairbanks.

Service of Copy of foregoing Order Settling Bill of Exceptions acknowledged.

O. L. RIDER,
Attorney for Plaintiff.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Jul. 6, 1914. Angus McBride, Clerk. **[1000]**

[Title of Court and Cause.]

Assignments of Error.

Comes now the above-named defendants John A. Jesson, E. R. Peoples, James W. Hill, Ray Brumbaugh, R. C. Wood and John L. McGinn, and file the following assignments of error upon which they will rely on their appeal from the decree made by this honorable Court upon the 15th day of June, 1914, in the above-entitled cause:

1.

The Court erred in overruling the motion of the defendants R. C. Wood, James W. Hill and John L. McGinn to strike from the files and records of this court and out of the case the complaint filed by the plaintiff herein, for the reason that said complaint

contained more than one cause of action, and that the same were not separately pleaded.

2.

The Court erred in overruling the motions of said defendants to strike certain parts and portions of said complaint.

3.

The Court erred in overruling the demurrers of the defendants to the amended complaint. [1001]

4.

The Court erred in sustaining the demurrer of the plaintiff to the first further and separate answer of the defendants Wood, McGinn and Healey.

5.

The Court erred in refusing to make the finding of fact set forth in paragraph XVI of defendants' proposed findings of fact and conclusions of law, as follows:

> That during all the negotiations heretofore mentioned the defendant R. C. Wood was not in Alaska, and was either in the State of California or the State of Washington. That said Wood's name was signed to the original subscription list, without his knowledge, by E. T. Barnette, and with the understanding of all the subscribers that it was optional with the said R. C. Wood on his return to Fairbanks, Alaska, to elect either to take stock in the new corporation or to receive money for the amount of stock to which he was entitled in lieu thereof."

The Court erred in refusing to make the finding of fact set forth in paragraph XVII of defendants' pro-

posed findings of fact and conclusions of law, as follows:

> That in accordance with the directions of the board of directors made upon the 12th day of March, 1908, to the executive committee, the executive committee proceeded to have the necessary papers and transfers made out conveying the property of the partnership to the corporation on the terms stated in the resolutions of January 5, 1908, and requested that the then attorneys of the bank prepare the necessary papers for that purpose. That in compliance with said request, the said attorneys undertook to draw up an agreement stating the true terms and conditions of said sale and transfer which is the agreement attached to plaintiff's said amended complaint and marked exhibit 1. That said agreement, through the mutual mistake of the partners and corporation, and without the fault of either, failed to set forth truly all the terms and conditions of the agreement between said Fairbanks Banking Company, a copartnership, and the corporation, in this: first, that said agreement failed to reserve to said copartners the accrued interest on all loans in existence on the 12th day of December, 1907, up to the 15th day of March, 1908, and second, in that it failed to embody the option given to said James W. Hill and R. C. Wood either to take stock for their portion of the surplus property of the partnership, or to take money, and that in the event of their desire to take money that the amount

should be paid to them not later than July 1, 1908.

The Court erred in refusing to make the finding of fact set forth in paragraph XVIII of defendants' proposed findings of fact and conclusions of law, as follows:

> That, with said exceptions, said agreement attached to plaintiff's amended complaint and marked exhibit 1 fully sets forth the **[1002]** terms and conditions agreed on and entered into between the Fairbanks Banking Company, a copartnership, and the corporation.

8.

The Court erred in refusing to make the finding of fact set forth in paragraph XIX of defendants' proposed findings of fact and conclusions of law, as follows:

> That the value placed upon said assets of the partnership was the value placed thereon by the stockholders, and that the resolution of the stockholders of March 12, 1908, authorizing the directors to take over such assets, contemplated only the execution of the formal papers necessary for the purposes of the transfer, and not that the directors should exercise their individual judgment in determining the value of such assets.

9.

The Court erred in refusing to make findings of fact set forth in paragraph XX of defendants' proposed findings of fact and conclusions of law, as follows:

That in accordance with the true agreement had between the copartnership and the corporation, the Fairbanks Banking Company, a corporation, issued to E. T. Barnette 260 shares of the capital stock of said corporation, and to James W. Hill 130 shares thereof, but no stock was ever issued or delivered to said R. C. Wood. That said R. C. Wood returned to Fairbanks, Alaska, on or about the 14th day of April, 1908, and at once notified the said corporation of his election to take money in lieu of stock, and at said time, and after reading said agreement of March 16, 1908, being exhibit 1 attached to plaintiff's amended complaint, refused to sign the same for the reason that in said agreement it set forth that he had subscribed for stock. That at said time it was agreed between the said R. C. Wood and the said corporation that he should have the right to take cash instead of stock up to July 1, 1908, and at said time there was shown to said Wood by said corporation the report of the committee of January 5, 1908, and the minutes of the corporation of March 12, 1908.

10.

The Court erred in refusing to make the finding of fact set forth in paragraph XXI of defendants' proposed findings of fact and conclusions of law, as follows:

That said Wood signed the said agreement of March 16, 1908, marked exhibit 1 attached to plaintiff's amended complaint, with the distinct understanding on his part, and of the Fairbanks

Banking Company, a corporation, that said report and minutes reserved to him the right to take money in lieu of stock; that it was never contemplated or understood by the said R. C. Wood or by the said corporation that by signing said agreement he would waive any right to take money in lieu of his stock. **[1003]**

11.

The Court erred in refusing to make the finding of fact set forth in paragraph XXII of defendants' proposed findings of fact and conclusions of law, as follows:

That said Wood on or about the 17th day of April, 1908, entered upon his duties as cashier of said corporation and continued as such cashier up until the 29th day of June, 1908.

12.

The Court erred in refusing to make the finding of fact set forth in paragraph XXIII of defendants' proposed findings of fact and conclusions of law, as follows:

That the board of directors and officers of said banks, in paying the money to said R. C. Wood, merely carried out the terms of the agreement entered into between said Wood and said corporation.

13.

The Court erred in refusing to make the finding of fact set forth in paragraph XXIV of defendants' proposed findings of fact and conclusions of law, as follows:

That the said sum of $39,642.81 placed to the

credit of said copartnership on the books of the corporation on March 23, 1908, and thereafter, and upon the 31st day of December, 1908, paid to said partners, was done in accordance with the terms of the agreement made and entered into between the copartnership and the proposed incorporators on January 6, 1908, save and except that the time thereof was subsequently extended by the board of directors from the 15th day of February, 1908, to the 15th day of March, 1908.

14.

The Court erred in refusing to make the finding of fact set forth in paragraph XXVI of defendants' proposed findings of fact and conclusions of law, as follows:

> That said directors of said corporation, in taking over the assets and liabilities of said copartnership, acted in good faith and after careful inquiry and investigation had been made to determine the actual value of the assets of said copartnership.

15.

The Court erred in refusing to make the finding of fact set forth in paragraph XXXIII of defendants' proposed findings of fact and conclusions of law, as follows:

> That on the 18th day of September, 1908, Oscar Goetz was the owner of ten shares of the outstanding capital stock of said corporation, and upon said date said stock, without the knowledge, consent, approval or acquiescence of said

board of [1004] directors, and without their fault, and in violation of the resolutions hereinbefore in the preceding paragraph set forth, was cancelled by J. A. Jackson, assistant cashier of said bank, and the sum of $1,000 paid to said Goetz out of the funds of said bank, and said stock debited to treasury stock.

16.

The Court erred in refusing to make finding of fact set forth in paragraph XXXIV of defendants' proposed findings of fact and conclusions of law, as follows:

That on the 18th day of September, 1909, the said J. A. Jackson, assistant cashier, without the knowledge, consent, approval, or acquiescence of said board of directors, and without any fault on their part, and in violation of said hereinbefore mentioned resolution of the executive committee, debited treasury stock with the amount of G. A. Vedine's stock $500.

That at said itme the said Vedine's name did not appear as a stockholder in the books of said bank, nor had any stock been issued to him, nor had he paid any money for or *or* on account of any stock of said bank; and that no money was paid to said Vedine for or on account of said transaction.

17.

The Court erred in refusing to make the finding of fact set forth in paragraph XXXV of defendants' proposed findings of fact and conclusions of law, as follows:

That on the 24th day of October, 1908, B. R. Dusenbury, cashier of said bank, without the knowledge, consent, approval or acquiescence of said board of directors, and without any fault on their part, and in violation of said hereinbefore mentioned resolution of the executive committee and board of directors, debited treasury stock on account of McDonnell stock in the sum of $200. That at said time the said McDonnell's name did not appear as a stockholder in any of the books of said corporation, nor had any stock been issued to him, nor had he paid any money whatsoever for or on account of any of the stock of said bank; and that no money was paid to said McDonnell for or on account of said transaction.

18.

The Court erred in refusing to make the finding of fact set forth in paragraph XXXVII of defendants' proposed findings of fact and conclusions of law, as follows:

That upon the 12th day of January, 1909, the said J. A. Jackson, without the knowledge, consent, approval, or acquiescence of the board of directors, and without any fault on their part, and in violation of said hereinbefore mentioned resolutions, debited treasury stock on account of F. E. Johnson's stock in [1005] the sum of $200. That at said time the said Johnson's name did not appear as a stockholder in the books of said corporation, nor had any stock been issued to him, nor had he paid any moneys for or on account of any stock of said corpora-

tion bank, and no money was paid to said F. E. Johnson for or on account of said transaction.

19.

The Court erred in refusing to make the finding of fact set forth in paragraph XXXIX of defendants' proposed findings of fact and conclusions of law, as follows:

That upon the 9th day of February, 1909, John Clifford, was the owner of two shares of the outstanding capital stock of said corporation, and upon said date the said B. R. Dusenbury, cashier of said bank, without the knowledge, consent, approval or acquiescence of said board of directors, and without any fault on their part, and in express violation of the resolutions hereinbefore set forth, cancelled said stock, and debited treasury stock with the sum of $200, and said Dusenbury paid the said Clifford out of the funds of said bank the said sum of $200.

20.

The Court erred in refusing to make the finding of fact set forth in paragraph XLII of defendants' proposed findings of fact and conclusions of law, as follows:

That upon the 10th day of June, 1909, Hart & McConnell were the owners of ten shares of the outstanding capital stock of said corporation, and upon said date said stock, without the consent, knowledge, approval or acquiescence of the board of directors, and without any fault on their part, and in violation of the resolutions hereinbefore set forth, which were

all well known to the officers of said bank, was cancelled by J. A. Jackson, assistant cashier, and the sum of $1000.00 was credited to the deposit account of said Hart & McConnell on the books of said bank, and said stock debited to treasury stock.

21.

The Court erred in refusing to make the finding of fact set forth in paragraph XLIII of defendants' proposed findings of fact and conclusions of law, as follows:

That upon the 21st day of August, 1909, Louis and Oscar Enstrom were the owners of ten shares of the outstanding capital stock of said Fairbanks Banking Company, and upon said date the said stock, without the knowledge, consent, approval or acquiescence of the board of directors, and without any fault on their part, and in violation of the resolutions hereinbefore set forth, was cancelled by B. R. Dusenbury, its cashier, and the sum of $1000.00 was placed to the credit of said Louis **[1006]** and Oscar Enstrom on the books of the bank, and said stock debited to treasury stock.

22.

The Court erred in refusing to make the finding of fact set forth in paragraph XLIV of defendants' proposed findings of fact and conclusions of law, as follows:

That in the month of May, 1909, H. B. Parkin, who was the owner of ten shares of the outstanding capital stock of said corporation, sold

his stock to B. R. Dusenbury, cashier, and the said Dusenbury paid therefor the sum of $1000. That said stock was not transferred on the books of said company to said B. R. Dusenbury, but remained on the books in the name of said H. B. Parkin. That thereafter some officer of said bank, without the knowledge, consent, approval or acquiescence of said board of directors, and without any fault on their part, made a memorandum note for the sum of $1000.00 on account of the Parkin stock, to which said memorandum note some officer of said bank signed the name of D. Michie; that thereafter, and on the 28th day of October, 1909, J. A. Jackson, then cashier, without the knowledge, consent, approval or acquiescence of said board of directors, and without any fault on their part, and in express violation of the resolutions which had theretofore been adopted by said board of directors, of which the said J. A. Jackson had full knowledge, cancelled the said memorandum note, and debited treasury stock with the sum of $1000.

23.

The Court erred in refusing to make the finding of fact set forth in paragraph XLV of defendants' proposed findings of fact and conclusions of law, as follows:

That upon the 28th day of October, 1909, the said J. A. Jackson, cashier, without the knowledge, consent, approval or acquiescence of the board of directors, and without any fault on

their part, and in violation of the said hereinbefore-mentioned resolutions of which the said Jackson had full knowledge, debited treasury stock on account of one Alex Cameron with $100.00 and also debited treasury stock $200.00 on account of Edith McCormick, and also debited treasury stock on account of J. W. McCormick, in the sum of $200. That at said time the said Cameron, and the said McCormicks' names did not appear as stockholders in the stock-books of said corporation, nor had any stock been issued to them, nor had they paid any money whatsoever for or on account of any stock of said bank; and that no money was paid to said Cameron or to said McCormicks for or on account of said transaction.

24.

The Court erred in refusing to make the finding of fact set forth in paragraph XLVI of defendants' proposed findings of fact and conclusions of law, as follows: **[1007]**

That upon the 10th day of November, 1909, the said J. A. Jackson, cashier, without the knowledge, consent, approval or acquiescence of said board of directors, and without any fault on their part, and in violation of said hereinbefore-mentioned resolutions of which the said Jackson had full knowledge, debited treasury stock on account of one Francis H. Taylor, in the sum of $500. That at said time the said Francis H. Taylor's name did not appear as a stockholder in any of the books of said

corporation, nor had any stock been issued to him, nor had he paid any money for or on account of any stock of said bank; and that no money was paid to said Taylor for or on account of said transaction.

25.

The Court erred in refusing to make the finding of fact set forth in paragraph XLVII of defendants' proposed findings of fact and conclusions of law, as follows:

That on the 23d day of November, 1909, the said J. A. Jackson, cashier, without the knowledge, consent, approval or acquiescence of said board of directors, and without any fault on their part, and in violation of the hereinbefore-mentioned resolutions, debited treasury stock on account of McGowan & Clark stock in the sum of $500. That at said time the said McGowan & Clark's name did not appear as stockholders in the books of said bank, nor had any stock been issued to them, nor had they paid any money for or on account of any of the stock of said corporation; and that no money was paid to said McGowan & Clark for or on account of said transaction.

26.

The Court erred in refusing to make the finding of fact set forth in paragraph XLVIII of defendants' proposed findings of fact and conclusions of law, as follows:

That upon the 18th day of January, 1910, Horton & Dunham were the owners of five

shares of the outstanding capital stock of said corporation, and upon said date said stock, without the knowledge, consent, approval or acquiescence of said board of directors, and without any fault on their part, and in express violation of the resolutions hereinbefore mentioned, was cancelled by J. A. Jackson, cashier, and the same was debited to treasury stock, and the sum of $500 placed to the credit of said Horton & Dunham on the books of said bank. That at said time the said Horton & Dunham were indebted to said Fairbanks Banking Company.

27.

The Court erred in refusing to make the findings of fact set forth in paragraph XLIX of defendants' proposed findings of fact and conclusions of law, as follows:

That for several years prior to the 13th day of October, 1910, the First National Bank of Fairbanks was engaged in the banking business in the town of Fairbanks, and ever since on or about the first day of May, 1910, the principal stockholders of said bank were R. C. Wood and John L. McGinn, and **[1008]** said bank was a competing bank with the Washington-Alaska Bank, formerly the Fairbanks Banking Company, and the competition was extremely keen between said banks.

28.

The Court erred in refusing to make the finding of fact set forth in paragraph LIII of defendants'

proposed findings of fact and conclusions of law, as follows:

> That at the time of the taking over of all of the stock hereinbefore mentioned and in the amended complaint mentioned, the assets of said corporation exceeded its liabilities, and the earnings and net profits on hand greatly exceeded the par value of the stock so surrendered, cancelled and returned to the treasury stock of said corporation.

29.

The Court erred in refusing to make the finding of fact set forth in paragraph LIV of defendants' proposed findings of fact and conclusions of law, as follows:

> That on the 21st day of September, 1909, the assets of said corporation, not including the interest which had been earned but not paid and which was not carried as an asset, exceeded the liabilities in the sum of $23,032.03.

30.

The Court erred in refusing to make the finding of fact set forth in paragraph LV of defendants' proposed findings of fact and conclusions of law, as follows:

> That on the 28th day of October, 1909, the assets of said corporation, not including interest which had been earned but not paid and which was not carried as an asset, exceeded its liabilities in the sum of $26,857.68.

31.

The Court erred in refusing to make the finding of

fact set forth in paragraph LVI of defendants' proposed findings of fact and conclusions of law, as follows:

> That on the 10th day of November, 1909, the assets of said corporation, not including interest which had been earned but not paid and which was not carried as an asset, exceeded its liabilities in the sum of $8,896.75.

32.

The Court erred in refusing to make the finding of fact set forth in paragraph LVII of defendants' proposed findings of fact **[1009]** and conclusions of law as follows:

> That on the 23d day of November, 1909, the assets of said corporation, not including interest which had been earned but not paid and which was not carried as an asset, exceeded its liabilities in the sum of $29,890.74.

33.

The Court erred in refusing to make the finding of fact set forth in paragraph LVIII of defendants' proposed findings of fact and conclusions of law, as follows:

> That on the 18th day of January, 1910, the assets of said corporation, not including interest which had been earned but not paid and which was not included or carried as an asset, exceeded its liabilities in the sum of $11,984.63.

34.

The Court erred in refusing to make the finding of fact set forth in paragraph LIX of defendants' proposed findings of fact and conclusions of law, as follows:

That it has not been shown that the creditors who were existing at the time of the surrender of said stock and the cancellation thereon as hereinbefore set forth have not been paid in full by the Washington-Alaska Bank of Nevada, save and except that on July 1, 1908, were existing creditors, who have not since been paid in full, to the amount of $4,000, and of said sum one-half thereof has since been paid by the receiver.

35.

The Court erred in refusing to make the finding of fact set forth in paragraph LX of defendants' proposed findings of fact and conclusions of law, as follows:

That at the time of the surrender and cancellation of said stock in the manner hereinbefore set forth, the directors honestly and in good faith believed that they had a right to purchase and take back the stock of said corporation, and were advised by the attorneys of said bank that they had such right.

36.

The Court erred in refusing to make the finding of fact set forth in paragraph LXI of defendants' proposed findings of fact and conclusions of law, as follows:

That at the time of the surrender and cancellation of said stock in the manner hereinbefore set forth, the directors honestly and in good faith believed, and had a right to believe, that the assets of said bank exceeded its liabilities

and there were net profits which greatly exceeded the par value of the stock so surrendered and cancelled. **[1010]**

37.

The Court erred in refusing to make the finding of fact set forth in paragraph LXII of defendants' proposed findings of fact and conclusions of law, as follows:

That all of said stock so debited to treasury stock was thereafter carried as an asset of the corporation, and it was not intended by said transaction to reduce the capital stock of said corporation or to retire the same; but, on the contrary, it was the intention to reissue the same to others.

38.

The Court erred in refusing to make the finding of fact set forth in paragraph LXIII of defendants' proposed findings of fact and conclusions of law as follows:

That on the 24th day of March, 1909, the Fairbanks Banking Company, in compliance with the laws of the Territory of Alaska, in regard to foreign corporations doing business therein filed and caused to be filed with the clerk of the United States District Court at Fairbanks, Alaska, a statement showing the amount of the outstanding capital stock of said corporation, and said statement upon said date showed that the outstanding capital stock of said corporation was of the par value of $173,600.

39.

The Court erred in refusing to make the finding of fact set forth in paragraph LXIV of defendants' proposed findings of fact and conclusions of law as follows:

That on September 14, 1909, the Fairbanks Banking Company, in compliance with the laws of the Territory of Alaska in regard to foreign corporations doing business therein, filed and caused to be filed with the clerk of the United States District Court at Fairbanks, Alaska, a statement showing the amount of the outstanding stock of said corporation, and said statement showed that upon said date the outstanding capital stock of said corporation was of the par value of $172,600.

40.

The Court erred in refusing to make the finding of fact set forth in paragraph LXV of defendants' proposed findings of fact and conclusions of law as follows:

That on September 10, 1910, the Fairbanks Banking Company, in compliance with the laws of the Territory of Alaska in [1011] regard to foreign corporations doing business therein, filed and caused to be filed with the clerk of the United States District Court at Fairbanks, Alaska, a statement showing the amount of the outstanding stock of said corporation, and said statement upon said date showed that the outstanding capital stock of said corporation was of the par value of $169,600.

41.

The Court erred in refusing to make the finding of fact set forth in paragraph LXVI of defendants' proposed findings of fact and conclusions of law as follows:

> That the end of the fiscal year of the Washington-Alaska Bank of Washington, and of the Fairbanks Banking Company, was the 31st day of December of each year, and at said time it had been the custom and practice of said Washington-Alaska Bank and said Fairbanks Banking Company to charge off all debts due said banks that in the judgment of their officers were bad and uncollectible, and which had not been charged off during said fiscal year.

42.

The Court erred in refusing to make the finding of fact set forth in paragraph LXVII of defendants' proposed findings of fact and conclusions of law as follows:

> That said bad debts due to the bank and so charged off were not, after said time, carried as an asset of said bank; and, after said bad debts had been deducted from the assets, any profits that were shown to exist, after the deduction of all liabilities including outstanding stock, was placed in the undivided profit account, and was carried until the end of the next fiscal year unless a dividend was declared upon the same, or bad debts charged against the same, during the next succeeding fiscal year.

43.

The Court erred in refusing to make the finding of fact set forth in paragraph LXVIII of defendants' proposed findings of fact and conclusions of law as follows:

> That at the end of the fiscal year of 1909, R. C. Wood, who was then the president and manager of the First National Bank, and also acting as advisory manager of said Washington-Alaska Bank and Fairbanks Banking Company, requested George Wesch, then cashier of the Washington-Alaska Bank, to make a list of the loans and discounts of said bank that he considered bad and uncollectible. That said Wesch thereupon prepared a list of all the said loans and discounts due said bank that he considered bad and uncollectible and presented the same to said R. C. Wood, and thereupon the said Wood and Wesch went over said list and arrived at the conclusion that the same included all the loans and discounts due said bank that were then bad and uncollectible, the same amounting to the sum of $8,599.59. That said loans and discounts due said bank were then and there, to wit, on December 31, 1909, charged off and no longer carried as an asset of said bank; and, after said bad loans and discounts were so charged off, there still **[1012]** remained undivided profits for the fiscal year ending December 31, 1909, amounting to the sum of $56,106.97.

44.

The Court erred in refusing to make the finding

of fact set forth in paragraph LXIX of defendants' proposed findings of fact and conclusions of law as follows:

That the said George Wesch was and is a man of high standing in this community, a banker of experience, capable and honest, and well acquainted with the securities of said bank and the standing of its debtors.

45.

The Court erred in refusing to make the finding of fact set forth in paragraph LXX of defendants' proposed findings of fact and conclusions of law as follows:

That the said R. C. Wood was a man of high standing in the community, the president of the First National Bank, a banker of experience, and well acquainted with the conditions of said Washington-Alaska Bank, and of the securities held by it for loans made by, and due to, said bank.

46.

The Court erred in refusing to make the finding of fact set forth in paragraph LXXI of defendants' proposed findings of fact and conclusions of law as follows:

That the said R. C. Wood, immediately after his appointment as advisory manager of said banks, prepared a record of all the loans and discounts of said Washington-Alaska Bank and said Fairbanks Banking Company, which said record contained the names of the debtors, the amounts due the said Washington-Alaska Bank

and Fairbanks Banking Company, and a description and the location of all property, real and personal, given to secure the loans made by said banks, which said record ever since the month of May, 1910, has been a record of said Fairbanks Banking Company, and is now in the possession of the receiver thereof.

47.

The Court erred in refusing to make the finding of fact set forth in paragraph LXXII of defendants' proposed findings of fact and conclusions of law as follows:

That said record-book so containing the names of the debtors of said Washington-Alaska Bank and the Fairbanks Banking Company, and a description and location of the properties given to secure said debts, although in the possession of the present receiver from the date of his appointment, was never examined by him, and the securities mentioned and described **[1013]** in said book, given to secure loans, was not known to him to be in existence.

48.

The Court erred in refusing to make the finding of fact set forth in paragraph LXXIII of defendants' proposed findings of fact and conclusions of law as follows:

That at the end of the fiscal year 1909, the said R. C. Wood requested J. A. Jackson, cashier of the Fairbanks Banking Company, to make out a list of loans and discounts of said Fairbanks Banking Company that he considered ba*n*d and

> uncollectible. That said Jackson thereupon prepared a list of all said loans and discounts due said bank that he considered bad and uncollectible and presented the same to said R. C. Wood, and thereupon the said Wood and Jackson went over said list and arrived at the conclusion that the same included all the loans and discounts due said bank that were then bad and uncollectible, the same amounting to the sum of $24,937.37.
>
> That said loans and discounts due said bank were then and there, to wit, on December 31, 1909, charged off and no longer carried as an asset of said bank; and, after said bad loans and discounts were so charged off, there still remained undivided profits for the fiscal year ending December 31, 1909, amounting to the sum of $9,881.78.

49.

The Court erred in refusing to make the finding of fact set forth in paragraph LXXIV of defendants' proposed findings of fact and conclusions of law as follows:

> That said J. A. Jackson was and is a man of high standing in the community, a banker of experience, capable and honest, and well acquainted with the securities of said bank, and the standing of its debtors.

50.

The Court erred in refusing to make the finding of fact set forth in paragraph LXXV of defendants'

proposed findings of fact and conclusions of law as follows:

That at the meeting of the board of directors of said Fairbanks Banking Company held on January 12, 1910, statements of the condition of the said Washington-Alaska Bank of Washington and the Fairbanks Banking Company as of date December 31, 1909, after said bad debts heretofore mentioned had been charged off, were presented by the officers of said bank to said board of directors; and, after the same had been discussed and examined by said directors, the same were ordered filed.

That said statement showed that the undivided profits of the Washington-Alaska Bank for the year ending December 31, 1909, after deducting what the officers of said bank regarded to be all of its bad loans and discounts, was the sum of $56,106.97.

That said statement showed that the undivided profits of the Fairbanks Banking Company for the year ending December 31, 1909, after deducting all the bad debts, was the sum of $9,881.78. **[1014]**

51.

The Court erred in refusing to make the finding of fact set forth in paragraph LXXVI of defendants' proposed findings of fact and conclusions of law as follows:

That upon the 12th day of April, 1910, the directors of the Washington-Alaska Bank declared a dividend of $50,000.00.

52.

The Court erred in refusing to make the finding of fact set forth in paragraph LXXVII of defendants' proposed findings of fact and conclusions of law as follows:

> That said dividend of the Washington-Alaska Bank of Washington, to wit, $50,000, was paid to its stockholder the Fairbanks Banking Company, $25,000 of which said sum was ordered by the directors to be placed to the credit of the undivided profit account of said Fairbanks Banking Company, and the other $25,000 was directed to be credited on the amount for which said Fairbanks Banking Company was carrying the stock of said Washington-Alaska Bank.

53.

The Court erred in refusing to make the finding of fact set forth in paragraph LXXVIII of defendants' proposed findings of fact and conclusions of law as follows:

> That after said sum of $25,000 had been added to said undivided profit account of said Fairbanks Banking Company, the undivided profit account of said bank at said time amounted to the sum of $34,828.55.

54.

The Court erred in refusing to make the finding of fact set forth in paragraph LXXIX of defendants' proposed findings of fact and conclusions of law as follows:

> That at the time of the declaration of said dividend, and after the adding of said sum of $25,000

to the undivided profit account, the books of said company showed that the undivided profit account amounted to the sum of $34,828.55, and the directors at said time honestly and in good faith believed that the undivided profit of said Fairbanks Banking Company was ths sum of $34,-828.55, and said directors were so advised by the officers of said bank.

55.

The Court erred in refusing to make the finding of fact set forth in paragraph LXXX of defendants' proposed findings of fact and conclusions of law as follows: **[1015]**

> That the profit of said Washington-Alaska Bank, Fairbanks Banking Company and First National Bank for the year ending December 31, 1909, was the sum of $131,332.91; and, after charging off bad debts on said three banks to the amount of $42,836.96, the net profits of said three banks for said year was $88,495.95.

56.

The Court erred in refusing to make the finding of fact set forth in paragraph LXXXI of defendants' proposed findings of fact and conclusions of law as follows:

> That the said Fairbanks Banking Company at the time of the declaration of the dividend was carrying the stock of the Gold Bar Lumber Company for the sum of $341,949, and said directors in good faith believed, and, from the reports of the officers of said Gold Bar Lumber Company, as well as from the reports of people

of high standing who were acquainted with said property and the value thereof, had a right to believe that said property was worth said amount.

57.

The Court erred in refusing to make the finding of fact set forth in paragraph LXXXII of defendants' proposed findings of fact and conclusions of law as follows:

That the advancements made to the Tanana Electric Company by the Fairbanks Banking Company for which two notes of the Tanana Electric Company were given to said bank amounting to the sum of $27,997.38, were authorized and directed by the Scandinavian-American Bank of Seattle, State of Washington, and the said directors, at the time of the declaration of said dividend, believed and had a right to believe that the same was a good and valid claim against the said Scandinavian-American Bank, and a valuable asset of said Fairbanks Banking Company to the amount that the same was carried by them.

58.

The Court erred in refusing to make the finding of fact set forth in paragraph LXXXIII of defendants' proposed findings of fact and conclusions of law as follows:

That said dividend was declared by said directors of said bank in good faith and in the honest belief, and after the exercise of due care, that the undivided profits of said banks

amounted to the said sum of $34,828.55, and that the values placed upon the assets of said bank was a true and correct one, and that the amount for which said bank was carrying its assets, and particularly its stocks, loans and discounts, were the true and correct valuation of the same.

59.

The Court erred in refusing to make the finding of fact set forth in paragraph LXXXIV of defendants' proposed findings of fact [1016] and conclusions of law as follows:

> That the directors of said bank, in making loans of the funds of said bank, acted carefully, honestly, and after careful inquiry and investigation had been made as to the standing of the borrowers and investigation made of the properties which were offered for security, and that said directors were acquainted with the loans and securities of said bank.

60.

The Court erred in refusing to make the finding of fact set forth in the paragraph LXXXV of defendants' proposed findings of fact and conclusions of law as follows:

> That E. T. Barnette, who is jointly charged with these defendants as to all the wrongs complained of in plaintiffs' amended complaint on file herein, was, during the time of all the transactions mentioned in said amended complaint, the president of said Fairbanks Banking Company, afterwards known as the Washington-Alaska Bank, and one of its directors.

61.

The Court erred in refusing to make the finding of fact set forth in paragraph LXXXVI of defendants' proposed findings of fact and conclusions of law as follows:

> That at the time of the suspension of the Washington-Alaska Bank of Nevada, the said E. T. Barnette was not within the Territory of Alaska, but shortly thereafter, and in the month of February, 1911, returned to Fairbanks, Alaska, and entered into negotiations with the creditors and depositors of said bank and with the then receivers of said bank, for the purpose of amicably adjusting all suits and causes of action that might exist against him on account of any of the matters and things set forth in plaintiff's amended complaint.

62.

The Court erred in refusing to make the finding of fact set forth in paragraph LXXXVII of defendants' proposed findings of fact and conclusions of law as follows:

> That as a result of said negotiations, and in full satisfaction of all the wrongs complained of in plaintiff's amended complaint, the said E. T. Barnette on the 18th day of March, 1911, executed an instrument in writing in which he admitted his liability to the creditors and depositors of said bank, and promised and agreed to pay all of the depositors of said bank in full not later than the 18th day of November, 1914, together with interest on all amounts due to

creditors and depositors from the 4th day of January, 1911, until paid.

63.

The Court erred in refusing to make the finding of fact set [1017] forth in paragraph LXXXVIII of defendants' proposed findings of fact and conclusions of law as follows:

> That Isabelle Barnette was and is the wife of the said E. T. Barnette, and the said Isabelle Barnette was desirous of aiding her said husband in the payment of the creditors and depositors of said Washington-Alaska Bank of Nevada, and to that end joined her said husband in the promise to pay all the depositors and creditors of said Washington-Alaska Bank of Nevada on the terms set forth in the preceding paragraph.

64.

The Court erred in refusing to make the finding of fact set forth in paragraph LXXXIX of defendants' proposed findings of fact and conclusions of law as follows:

> That said promise was made upon the distinct understanding that no litigation would be instituted against the said E. T. Barnette, or others for or on account of any of the matters and things set forth in the amended complaint, and for this purpose, and to prevent any litigation, and as security for the faithful p*re*formance of the promises made by said E. T. Barnette and Isabelle Barnette, the said Isabelle Barnette and E. T. Barnette on the 18th day of March, 1911,

with the knowledge and consent and approval of this Court, conveyed to the receivers of said bank, and the said receivers by order of this Court accepted the conveyance of title to an improved plantation containing 18,723 acres of land, situate in the Republic of Mexico, and certain improved and income producing business properties and lots situate in the incorporated town of Fairbanks, Territory of Alaska, and certain large interests in valuable association placer mining claims situate in the Fairbanks Precinct, Territory of Alaska; all of which properties belonged at the time of said conveyance to said E. T. Barnette and Isabelle Barnette.

65.

The Court erred in refusing to make the finding of fact set forth in paragraph XC of defendants' proposed findings of fact and conclusions of law as follows:

That the property so conveyed by the said E. T. Barnette and Isabelle Barnette situated in the Republic of Mexico was, at the time of said conveyance, of the value of $500,000.00. That at this time, owing to the unsettled conditions in the Republic of Mexico caused by rebellion and open warfare, it is difficult to determine what is the present value of said property situate in said Republic of Mexico, which said property is of great value, but the market value thereof cannot be determined at this time.

66.

The Court erred in refusing to make the finding

of fact set forth in paragraph XCI of defendants' proposed findings of fact and conclusions of law as follows: [1018]

> That the property conveyed by the said E. T. Barnette and Isabelle Barnette in the town of Fairbanks, Territory of Alaska, is of the value of $25,000.

67.

The Court erred in refusing to make the finding of fact set forth in paragraph XCII of defendants' proposed findings of fact and conclusions of law as follows:

> That the value of the interest of the said E. T. Barnette and Isabelle Barnette in association placer mining claims situate in the Fairbanks Recording District, Territory of Alaska, and conveyed by them to said receivers, is the value of $20,000.

68.

The Court erred in refusing to make the finding of fact set forth in paragraph XCIII of defendants' proposed findings of fact and conclusions of law as follows:

> That the receiver has received from said mining properties and said town properties as rents, royalties and proceeds, up to the present time, the sum of $31,400.

69.

The Court erred in refusing to make the finding of fact set forth in paragraph XCIV of defendants' proposed findings of fact and conclusions of law as follows:

That in said deed of said property in the Republic of Mexico it is expressly provided that said receiver may sell all or any part of said land at private sale on or after the 18th day of November, 1914, for the purpose of raising funds with which to pay the claims of the depositors and creditors of said bank then remaining unpaid, and, out of the proceeds thereof, said receiver is directed to pay all the claims of depositors and creditors of said bank then remaining unpaid.

70.

The Court erred in refusing to make the finding of fact set forth in paragraph XCV of defendants' proposed findings of fact and conclusions of law as follows:

That in said deed E. T. Barnette and Isabelle Barnette further authorize and empower said receiver to collect and receive the amount of $226,025 payable on the 18th day of November, 1914, in case of an option given on the 18th day of November, 1909, for the purchase of forty-nine per cent of said property situate in the Republic of Mexico, is exercised by the optionees mentioned in said option by that time, and to apply such sum to the payment of said claims of depositors and creditors of said bank. **[1019]**

71.

The Court erred in refusing to make the finding of fact set forth in paragraph XCVI of defendants'

proposed findings of fact and conclusions of law as follows:

That said deed to property in the Territory of Alaska also provides for and gives said receiver power to collect and receive all the rents, royalties and proceeds of the property therein described, and to sell said property and to apply the amount so received in payment of said claims of depositors and creditors of said bank at any time when it shall be deemed most advisable to do so by the said E. T. Barnette and Isabelle Barnette and the receiver; but that if said property is not so sold by the 18th day of November, 1914, that said receiver is then authorized to sell said property without the consent of said E. T. Barnette and Isabelle Barnette and to apply the amount so received in payment of the claims of the creditors and depositors of said Washington-Alaska Bank of Nevada.

72.

The Court erred in refusing to make the findings of fact set forth in paragraph XCVII of defendants' proposed findings of fact and conclusions of law as follows:

That the said receiver holds a large amount of property belonging to said bank, which is of great value and has not been converted into money; and the property so held by him, and the property so conveyed to the receiver by the said E. T. Barnette and Isabelle Barnette, are more than sufficient to satisfy all the claims, demands and obligations of whatsoever nature now

existing against said Washington-Alaska Bank of Nevada.

73.

The Court erred in refusing to make the findings of fact set forth in paragraph XCVIII of defendants' proposed findings of fact and conclusions of law as follows:

> That the receiver has received as rents, royalties and profits from the property of the said E. T. Barnette and Isabelle Barnette situate in the Territory of Alaska, the sum of $31,400.00, and that said amount, together with the property conveyed by the said E. T. Barnette and Isabelle Barnette, exclusive of the property situate in said Republic of Mexico, are more than ample to pay all the matters and things charged against these defendants in said amended complaint of plaintiff herein; and that all the wrongs and things charged against these defendants in said amended complaint have, by reason thereof, been fully satisfied and paid.

74.

The Court erred in refusing to make the finding of fact set forth in paragraph XCIX of defendants' proposed findings of fact and conclusions of law as follows: [1020]

> That the then receivers of the said Washington-Alaska Bank agreed to accept in full satisfaction of all the matters and things set forth in plaintiff's amended complaint and sued on herein, the said promises and property of the said E. T. Barnette and Isabelle Barnette, and the

said E. T. Barnette and Isabelle Barnette made and executed said promises and conveyed said property, in full satisfaction of all suits or causes of action then existing against him on account of any and all matters and things arising from his connection with the said Washington-Alaska Bank of Nevada, and in full satisfaction of all the matters and things set forth in plaintiff's amended complaint; and the said receivers accepted and received said promises and said property in full satisfaction of all claims and causes of action set forth in the amended complaint of the plaintiff herein.

75.

The Court erred in refusing to find as a conclusion of law what is set forth in paragraph 2 of defendants' proposed findings of fact and conclusions of law, which is as follows:

That the payment of said sum of $13,000 to R. C. Wood by said corporation was done in accordance with the true terms of the agreement entered into between the said R. C. Wood and the said Fairbanks Banking Company, a corporation.

76.

The Court erred in refusing to find as a conclusion of law what is set forth in paragraph III of defendants' proposed findings of fact and conclusions of law, which is as follows:

That the sum of $39,642.81 paid to said E. T. Barnette, R. C. Wood and James W. Hill for interest on loans that were existing December

12, 1907, up to March 15, 1908, was in accordance with the true intent and spirit of the agreement entered into between the stockholders of said Fairbanks Banking Company, a corporation, and the said copartners, and the said board of directors, in allowing interest as aforesaid, carried out the true intent and spirit of the agreement entered into between the said stockholders and the said copartners.

77.

The Court erred in refusing to find as a conclusion of law what is set forth in paragraph IV of defendants' proposed findings of fact and conclusions of law, which is as follows:

That the stock that was surrendered, and taken back by the directors, and of which said directors had knowledge, was taken honestly and in good faith and under the belief of the said directors that they had a right to take back said stock, and that the same was for the best interest of the corporation.

78.

The Court erred in refusing to find as a conclusion of law what is set forth in paragraph V of defendants' proposed findings [1021] of fact and conclusions of law, which is as follows:

That the balance of the stock so surrendered, and taken back by the officers of said bank, was done with the knowledge, consent, approval or acquiescence of said directors, and there was nothing to charge the said directors with knowledge that its officers were violating the resolu-

tions of the said board of directors not to take back or cancel any stock.

79.

The Court erred in refusing to find as a conclusion of law what is set forth in paragraph VI of defendants' proposed findings of fact and conclusions of law, which is as follows:

> That the declaration of the dividend by the directors was done by them honestly and in good faith and under the honest belief that the assets of said corporation exceeded it's liabilities in the sum of $34,828.55, and that there was not profits to said amount and that said directors believed at said time that the assets were of the value that said corporation was carrying them.

80.

The Court erred in refusing to find as a conclusion of law what is set forth in paragraph VIII of defendants' proposed findings of fact and conclusions of law, which is as follows:

> That the directors of said bank had a right to rely upon the honesty and fidelity of their officers, and are not chargeable with any acts that said officers did in violation of the instructions of said board of directors.

81.

The Court erred in refusing to find as a conclusion of law what is set forth in paragraph IX of defendants' proposed findings of fact and conclusions of law, which is as follows:

> That the allegations of plaintiff's amended complaint are untrue, and the allegations of the

defendants' answers are true.

82.

The Court erred in refusing to find as a conclusion of law what is set forth in paragraph X of defendants' proposed findings of fact and conclusions of law, and which is as follows:

> That the plaintiff is not entitled to recover any judgment whatsoever against any of the defendants Jesson, Heill, Wood, Brumbaugh, McGinn, Peoples, Clark, Healey and Preston, or either of them.

83.

The Court erred in refusing to find as a conclusion of law **[1022]** what is set forth in paragraph XI of defendants' proposed findings of fact and conclusions of law, which is as follows:

> That the defendants are entitled to a decree that the plaintiff recover nothing by this action, and that defendants have judgment for their costs and disbursements.

84.

The Court erred in overruling the defendants' objections to the finding of fact number II of the findings of fact signed and filed in this cause, and in making the same, which is as follows:

> That said bank commenced business in the town of Fairbanks, Alaska, on the 16 day of March, 1908, with a subscribed capital of $206,-000.00, part of which was paid in cash, part in property, and the balance by promissory notes of the subscribers.

85.

The Court erred in overruling the defendants' objections to the finding of fact number III of the findings of fact signed and filed in this cause, and in making the same, which is as follows:

> That prior to the 21 day of January, 1908, subscriptions for said capital stock were circulated and the following persons, among others, subscribed for shares thereof, to wit: E. T. Barnette, 440 shares, R. C. Wood, 220 shares, James W. Hill, 220 shares, the name of R. C. Wood bein subscribed thereto by said E. T. Barnette.

86.

The Court erred in overruling the defendants' objections to that portion of paragraph XIII of the findings of fact signed and filed in said cause, and in making the same, wherein it is stated that the said Wood, together with other subscribers, were declared to be stockholders of said corporation; and also to that portion thereof wherein it is stated that the said Wood was notified of the result of said meeting of stockholders by the defendant Hill.

87.

The Court erred in overruling the defendants' objections to that portion of finding of fact numbered XIV made and filed in this cause, and in making the same, wherein it is stated that said R. C. Wood, at the time said agreement was signed, was the cashier of said bank. **[1023]**

88.

The Court erred in overruling defendants' objections to that portion of paragraph XV of the findings

of fact made and filed in this cause, and in mailing the same, wherein it is stated that upon the 16th day of March, 1908, a written agreement was entered into between said corporation and said partners, in which said agreement the said Wood agreed to accept stock of the corporation at its par value for the amount of the assets in excess of said liabilities.

89.

The Court erred in overruling defendants' objection to that portion of paragraph XVI of the findings of fact made and filed in this cause, and in mailing the same, wherein it is stated that the said Wood was its cashier.

90.

The Court erred in overruling defendants' objections to that portion of findings numbered XIX so made and filed in this cause, and in mailing the same, wherein it is stated that said Wood was fully advised concerning the same by the defendant Hill by letter and telegram.

91.

The Court *errs* in overruling defendants' objections to finding of fact numbered XX so made and filed in this cause, and in making the same, which is as follows:

> That prior to the return of said Wood to Fairbanks, to wit; on the 29th day of February, 1908, he offered to sell his stock in said corporation and to take in payment therefor part cash and a note for the balance, to be secured by said stock as collateral security.

92.

The Court erred in overruling the defendants' ob-

jections to finding of fact numbered XXII so made and filed in this cause, and in making the same, which is as follows:

> That of the loans and discounts transferred by said partnership to said corporation, a large amount were then past due, of which then past due paper the sum of $69,908.94 now remains in the hands of the receiver unpaid and uncollectible, which said loans and discounts were accepted by the directors of said corporation at their face value, and the same were included **[1024]** in those on which the accrued interest referred to in said resolution was afterwards computed.

93.

The Court erred in overruling the defendants' objections to finding of fact numbered XXIII so made and filed in this cause, and in making the same, which is as follows:

> That of said notes so past due as aforesaid, there were two executed by the Tanana Electric Company in the sum of $27,997.38, which depended for their value upon the existence of an alleged guaranty of the Scandinavian American Bank to make advancements sufficient to cover the same; that said alleged guaranty never had any existence in fact, and the claim therefor had been repudiated by said Scandinavian-American Bank prior to the time said note was accepted by said board of directors, and said repudiation was known to the members of said board. That said notes are still unpaid,

and the same was at all times carried on the books of the said Washington-Alaska Bank, formerly Fairbanks Banking Company, as an asset in the sum of $27,997.38.

94.

The Court erred in overruling the defendants' objections to finding of fact numbered XXIV so made and filed in this cause, and in making the same, which is as follows:

That said board of directors and the officers of said bank accepted said notes of the Tanana Electric Company and paid therefor the sum of $27,997.38, with knowledge on the part of each of them that the same depended for their value upon said alleged guaranty alone.

95.

The Court erred in overruling defendants' objections to finding of fact numbered XXIX so made and filed in this cause, and in making the same, which is as follows:

That a certificate for 130 shares of the capital stock of said corporation had been written up in the name of the defendant Wood, of the par value of $13,000, but the same was never detached from the stock-book. That said 130 shares were carried on the books of said bank as outstanding stock from March 16, 1908, to June 30, 1908.

96.

The Court erred in overruling the defendants' objection to finding of fact numbered XXX so made and filed in this cause, and in making the same, which is as follows:

> That on the 30 day of June, 1908, with the knowledge, consent and approval of the officers and directors of said bank, a **[1025]** certificate of deposit was issued to and accepted by the said Wood in the sum of $13,000, in lieu of said stock, which said certificate was signed by the said B. R. Dusenbury as assistant cashier prior to when the said resignation of the said Wood as cashier became effective, and said shares of capital stock were on the same day charged to treasury stock on the books of said bank.

97.

The Court erred in overruling the defendants' objections to that portion of paragraph XXXIV of the findings of fact signed and filed in this cause, and in making the same, wherein it is stated that at the time said certificate of deposit was issued to said Wood he was cashier and a member of the executive committee; said finding of fact being as follows:

> That at the time the said certificate of deposit was issued to said Wood, and his shares of stock so charged to treasury stock as aforesaid, the following of the defendants now before the court in this action were among its officers, to wit, James W. Hill, a member of the executive committee, and its vice-president, John A. Jesson, a member of the board of directors, R. C. Wood, cashier, and a member of its executive committee; and, at said meeting of July 13, 1908, at the time said report was submitted and the

sense of said meeting was expressed as aforesaid, the said John A. Jesson was present and participated therein as a member of the board of directors, and the said James W. Hill was also present as its vice-president and a member of the executive committee.

98.

The Court erred in overruling the defendants' objections to finding of fact numbered XXXV of the findings of fact signed and filed in this case, and in making the same, which is as follows:

That of the notes accepted from said partnership as aforesaid and paid for by said corporation, there were charged on December 31, 1907, by said partnership on the books of said partnership to an account known as "doubtful account" the sum of $22,979.99, and said doubtful account, so including said notes in said amount, was then depreciated on the said books to the amount of thirty-three and one-third per cent thereof, which said notes were accepted by said corporation and paid for by them in the amount aforesaid, to wit, $22,979.99, all of which said notes were then past due, and of which there still remain unpaid and uncollectible the sum of $12,880.61. That of said notes so charged to said doubtful account as aforesaid, there was on December 31, 1909, charged by said corporation to the account of profit and loss on the books of said corporation the sum of $12,192.80 **[1026]**

99.

The Court erred in overruling the defendants' ob-

jections to finding of fact numbered XXXVII so made and filed in this cause, and in making the same, which is as follows:

> That of said interest so paid to said Barnette, Hill and Wood, as aforesaid, approximately $7500.00 thereof was never collected by said bank.

100.

The Court erred in overruling the defendants' objections to finding of fact numbered XXXVIII so made and filed in this cause, and in making the same, which is as follows:

> That at the time said resolution allowing said interest was adopted, and at the time the amount thereof as aforesaid was placed to the credit of said Barnette, Hill and Wood as aforesaid, in the books of the said bank, the following defendants now before the court in this action were officers of said bank, to wit, John A. Jesson, member of the board of directors, James W. Hill, member of the executive committee and vice-president, and R. C. Wood, cashier.

101.

The Court erred in overruling the defendants' objections to finding of fact numbered XL so made and filed in this cause, and in making the same, which is as follows:

> That at the time said investment was so made as aforesaid, said lumber company was closed down, and immediately prior to closing down, it had been operated at a loss; that is so far as said lumber company was able to operate

> since the purchase of said stock by said corporation, all of its earnings and a part of its surplus have been expended in the purchase and repair of equipment for said mill, and in the operation of said mill its standing timber was being consumed and its best assets exhausted. That no dividends have ever been paid on the capital stock of said lumber company during the time the same was owned by said bank.

102.

The Court erred in overruling the defendants' objections to that portion of paragraph LI of the findings of fact made and filed in said cause, and in making the same, which is as follows:

> That said bank had no surplus or undivided profits against which the same could be charged.

103.

The Court erred in overruling the defendants' objections to paragraph LII of the findings of fact so made and filed in said cause, and in making the same, which is as follows: **[1027]**

> That the taking back of said stock and the payment therefor as aforesaid was illegal, wrongful, and in violation of the laws of the State of Nevada under which said corporation was organized.

104.

The Court erred in overruling the defendants' objections to finding of fact numbered LIV so made and filed in this cause, and in making the same, which is as follows:

> That said stock surrenders so made as afore-

said were acquiesced in by said directors, and in some instances were made under their directions and with their express approval.

105.

The Court erred in overruling the defendants' objections to finding of fact numbered LVII so made and filed in this cause, and in making the same, which is as follows:

That the time the said capital stock of said Washington-Alaska Bank of Washington was so purchased, the defendants J. A. Jesson, James W. Hill and John L. McGinn were members of the board of directors of the Fairbanks Banking Company; and said purchase of said capital stock was ratified and confirmed by them as members of the said board on the said 14 day of September, 1909.

106.

The Court erred in overruling the defendants' objections to finding of fact numbered LVIII so made and filed in this cause, and in making the same, which is as follows:

That at the time the aforesaid resolution was adopted by the said board of directors to take over the business and affairs of said partnership, and at the time said written agreement between said corporation and said partners was entered into and confirmed and approved, and at the time said valuation was placed on said capital stock of the Gold Ba*d* Lumber Company and said stock accepted at such valuation, and at the time said past due notes held by said partners were

> accepted and paid for by said corporation, including said notes which had been charged to the doubtful account of said partnership as aforesaid, and at the time said accrued interest on said notes so purchased of said partnership was computed and allowed to said partners and placed to their credit as aforesaid on the books of said corporation, the following defendants now before the Court in this action were officers and directors of said corporation and acquiesced in said transactions and gave their consent thereto with full knowledge on the part of each of them of the existence of the facts heretofore found respecting such transactions, to wit: James W. Hill, vice-president and member of its executive committee, John A. Jesson, member of its board of directors, R. C. Wood, the cashier. That the said Hill and Wood were also members of the partnership with which said corporation contracted respecting said matters and were each personally interested therein adversely to said corporation. [1028]

107.

The Court erred in overruling the defendants' objections to finding of fact numbered LXI so made and filed in this cause, and in making the same, which is as follows:

> That at the time said dividend was so declared and paid, the Fairbanks Banking Company did not have any surplus or undivided profits out of which the same could be declared and paid.

108.

The Court erred in overruling the defendants' ob-

jections to finding of fact numbered LXII so made and filed in this cause, and in making the same, which is as follows:

> That said dividend was declared and paid in violation of the laws of the States of Nevada, and also in violation of the by-laws of the said Fairbanks Banking Company, and was wrongful and illegal.

109.

The Court erred in overruling the defendants' objections to finding of fact numbered LXVI so made and filed in this cause, and in making the same, which is as follows:

> That the assets of the said bank now in the hands of the receiver are insufficient to pay its liabilities, and the amount of such liabilities is more than $470,000 in excess of the value of said assets.

110.

The Court erred in overruling the defendants' objections to conclusion of law numbered I of the conclusions of law signed and filed in this cause, and in making the same, which is as follows:

> That the defendants Wood, McGinn, Brumbaugh and Jesson are jointly and severally liable in the sum of $33,720.00 by reason of the declaration and payment of the dividend upon the capital stock of the Fairbanks Banking Company on April 12, 1910.

111.

The Court erred in overruling the defendants' objections to conclusion of law numbered 2 of the con-

clusions of law signed and filed in this cause, and in making the same, which is as follows:

> That the defendant Jesson is liable in the sum of $13,400.00 by reason of the surrender of shares of capital stock of said company, made between July 13, 1908, and September 12, 1908.

112.

The Court erred in overruling the defendants' objections to [1029] conclusion of law numbered 3 of the conclusions of law signed and filed in this cause, and in making the same, which is as follows:

> That the defendants Jesson and Hill are jointly and severally liable in the sum of $1,500.00 for surrender of shares of capital stock of said company made between September 13, 1908, and October 13, 1908.

113.

The Court erred in overruling the defendants' objections to conclusion of law numbered 4 of the conclusions of law signed and filed in this cause, and in making the same, which is as follows:

> That the defendants Jesson, Hill and Peoples are jointly and severally liable in the sum of $1,100.00 for surrenders of shares of capital stock, made between October 14, 1908, and March 13, 1909.

114.

The Court erred in overruling the defendants' objections to conclusion of law numbered 5 of the conclusions of law signed and filed in this cause, and in making the same, which is as follows:

> That the defendants Jesson, Hill and Brum-

baugh are jointly and severally liable in the sum of $1,000.00 for surrenders of capital stock of said company made between March 14, 1909, and September 12, 1909.

115.

The Court erred in overruling the defendants' objections to conclusion of law numbered 6 of the conclusions of law signed and filed in this cause, and in making the same, which is as follows:

> That defendants Jesson, Brumbaugh and McGinn are jointly and severally liable in the sum of $3,000.00 for surrenders of capital stock of said company, made between September 13, 1909, and October 12, 1909.

116.

The Court erred in overruling the defendants' objections to conclusions of law numbered 7 of the conclusions of law signed and filed in this cause, and in making the same, which is as follows:

> That defendants Jesson, McGinn and Brumbaugh are jointly and severally liable in the sum of $1,000.00 for surrenders of capital stock made between October 13, 1909, and January 18, 1910.

117.

The Court erred in making a conclusion of law as set forth in paragraph 8 of the conclusions of law signed and filed in this cause, which is as follows: [1030]

> That the plaintiff is entitled to a decree and judgment against the above-named defendants for the recovery of the sums above mentioned.

118.

The Court erred in making and entering judgment

and decree in favor of the plaintiff and against the defendants R. C. Wood, John L. McGinn, Ray Brumbaugh and J. A. Jesson, jointly and severally for the sum of $33,720.00 by reason of the declaration and payment on April 12, 1910, of the dividend upon the capital stock of the Fairbanks Banking Company, set up in the complaint.

119.

The Court erred in rendering and entering a judgment and decree in favor of the plaintiff and against the defendant J. A. Jesson for the sum of $13,400 by reason of the surrender of shares of the capital stock of said company made between July 13, 1908, and September 12, 1908.

120.

The Court erred in making and rendering and entering a judgment and decree in favor of the plaintiff and against the defendants J. A. Jesson and James W. Hill, jointly and severally, for the sum of $1,500.00 by reason of the surrender of shares of the capital stock of said company made between September 13, 1908, and October 13, 1908.

121.

The Court erred in making, rendering and entering a judgment and decree in favor of the plaintiff and against the defendants James W. Hill and J. A. Jesson and E. R. Peoples, jointly and severally for the sum of $1,100.00 by reason of the surrender of shares of the capital stock of said company made between October 14, 1908, and March 13, 1909.

122.

The Court erred in making, rendering and enter-

ing a judgment and decree in favor of the plaintiff and against the defendants J. A. Jesson, James W. Hill and Ray Brumbaugh, jointly and severally, [1031] for the sum of $1,000.00 by reason of the surrender of shares of the capital stock of said company made between March 14, 1909, and September 12, 1909.

123.

The Court erred in making, rendering and entering a judgment and decree in favor of the plaintiff and against the defendants J. A. Jesson, Ray Brumbaugh and John L. McGinn, jointly and severally, for the sum of $3,000.00 by reason of the surrender of shares of capital stock of said company made between September 13, 1909, and October 12, 1909.

124.

The Court erred in making, rendering and entering a judgment and decree in favor of the plaintiff and against the defendants John A. Jesson, John L. McGinn and Ray Brumbaugh, jointly and severally, for the sum of $1,000.00 by reason of the surrender of shares of the capital stock of said company, made between October 13, 1909, and January 18, 1910.

125.

The Court erred in making, rendering and entering a judgment and decree in favor of the plaintiff and against the defendants R. C. Wood, E. R. Peoples, John L. McGinn, J. A. Jesson, Ray Brumbaugh, and James W. Hill, to the effect that plaintiff recover the costs of and from said defendants.

126.

The Court erred in making, rendering and enter-

ing a decree to the effect that execution issue for the enforcement of the above judgments and decrees against the defendants R. C. Wood, E. R. Peoples, John L. McGinn, J. A. Jesson, Ray Brumbaugh and James W. Hill.

127.

The Court erred in not making, rendering and entering a decree in favor of defendants and against the plaintiff to the effect that the plaintiff take nothing in this action, and that the defendants recover their costs and disbursements. **[1032]**

128.

The Court erred in refusing to make a finding that all the matters and things charged in the complaint were fully compromised and settled by the accord and satisfaction that was entered into between E. T. Barnette and Isabelle Barnette, and the former receivers of said corporation.

129.

The Court erred in finding that the defendants Wood, Brumbaugh, J. A. Jesson and McGinn, as directors, were liable for the declaration of the dividend of the 12th day of April, 1910.

130.

The Court erred in finding that these defendants were liable for the stock taken back by said corporation, as set forth in the findings of fact.

131.

The Court erred in failing to make a finding of fact to the effect that all the wrongs charged in the complaint have been fully paid and satisfied by the said E. T. Barnette and Isabelle Barnette.

132.

The Court in failing to make a finding of fact to the effect that all the matters and things found against these defendants have been fully satisfied and paid by the said E. T. Barnette and Isabelle Barnette.

128.

WHEREFORE defendants pray that the judgment and decree of said Court be vacated and set aside, and that judgment and decree be entered in favor of defendants to the effect that plaintiff recover nothing by this action and that said defendants recover their costs and disbursements; and that they have such other and further relief as in accordance with the law they are entitled to receive.

McGOWAN & CLARK,
A. R. HEILIG,
JOHN L. McGINN,
Attorneys for Said Defendants.

Service of the foregoing Assignments of Error is hereby acknowledged at Fairbanks, Alaska, this 6th day of July, 1914, by receipt of a true copy thereof.

O. L. RIDER,
Attorney for Plaintiff. [1033]

[Endorsed]: No. 1756. District Court 4 Division, Territory of Alaska. F. G. Noyes, Receiver, vs. J. A. Jesson et al. Assignments of Error. Filed in the District Court, Territory of Alaska, 4th Div. Jul. 6, 1914. Angus McBride, Clerk. [1034]

[Title of Court and Cause.]

Petition for Allowance of Appeal, and Order Granting Same.

The above-named defendants John A. Jesson, E. R. Peoples, James W. Hill, Ray Brumbaugh, R. C. Wood, and John L. McGinn, conceiving themselves aggrieved by the order, judgment and decree made and entered in the above-entitled court and cause on the 15th day of June, 1914, wherein it was adjudged and decreed;

That the plaintiff have and recover of and from the defendants R. C. Wood, John L. McGinn, Ray Brumbaugh and J. A. Jesson, jointly and severally the sum of $33,720.00 by reason of the declaration and payment on April 12th, 1910, of the dividend upon the capital stock of the Fairbanks Banking Company set up in the complaint;

That the plaintiff have and recover of and from the defendant J. A. Jesson the further sum of $13,400.00 by reason of the surrender of shares of the capital stock of said company made between July 13, 1908 and September 12, 1909;

That the plaintiff have and recover of and from the defendants J. A. Jesson and James W. Hill, jointly and severally the further sum of $1,500.00 by reason of the surrender of shares of the capital stock of said company made between September 13, 1908 and October 13, 1908; **[1035]**

That the plaintiff have and recover of and from the defendants J. A. Jesson, James W. Hill and E. R.

Peoples, jointly and severally, the further sum of $1,000.00 by reason of the surrender of shares of the capital stock of said company made between October 14, 1908 and March 13, 1909;

That the plaintiff have and recover of and from the defendants J. A. Jesson, James W. Hill and Ray Brumbaugh, jointly and severally, the further sum of $1,000.00 by reason of the surrender of shares of the capital stock of said company made between March 14, 1909 and September 12, 1909;

That the plaintiff have and recover of and from the defendants J. A. Jesson, Ray Brumbaugh and John L. McGinn, jointly and severally, the further sum of $3,000.00 by reason of the surrender of shares of the capital stock of said company made between the 13th day of September, 1909, and the 12th day of October, 1909;

That the plaintiff have and recover of and from the defendants J. A. Jesson, John L. McGinn and Ray Brumbaugh, jointly and severally, the further sum of $1,000.00 by reason of the surrender of shares of the capital stock of said company made between October 13, 1909, and January 18, 1910;

All of which is finally ordered adjudged and decreed at the cost of the defendants R. C. Wood, E. R. Peoples, John L. McGinn, J. A. Jesson, Ray Brumbaugh and James W. Hill;

Do hereby appeal from said order, judgment and decree made and entered on the 15th day of June, 1914, to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignments of error filed herein; and they pray that

this appeal may be allowed; and that the transcript of the record, papers and proceedings upon which said judgment and decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; [1036] and they pray that the Court fix the amount of the security which the defendant E. R. Peoples shall give and furnish upon such appeal, and that upon the giving of such security all further proceedings in this court be suspended and stayed as against the said E. R. Peoples until the determination of said appeal by the United States Circuit Court of Appeals for the Ninth Circuit; and that the Court also make an order fixing the amount of security which the defendants Wood and McGinn shall give and furnish upon such appeal, and that, upon the giving of such security, all further proceedings in this court be suspended and stayed until the determination of said appeal by the United States Circuit Court of Appeals for the Ninth Circuit; and that as to the other defendants, the Court fix the amount of the cost bond on appeal.

McGOWAN & CLARK,
A. R. HEILIG,
JOHN L. McGINN,
Attorneys for Said Defendants.

Service of the foregoing Petition for allowance of an appeal is hereby admitted at Fairbanks, Alaska, this 6th day of July, 1914, by receipt of a copy thereof.

O. L. RIDER,
Attorney for Plaintiff.

The foregoing Petition on Appeal is granted. Done in open Court this 6th day of July, 1914.

F. E. FULLER,
District Judge.

Entered in Court Journal No. 2 page 26, at Iditarod, Alaska.

Entered in Court Journal No. 13, page 2.

[Endorsed]: No. 1756 District Court, 4 Division Territory of Alaska, F. G. Noyes, Receiver, vs. J. A. Jesson, et al. Petition on Appeal. Filed in the District Court, Territory of Alaska, 4th Div. Jul. 6, 1914, Angus McBride, Clerk. [1037]

That at a stated term, to wit, at the Special July, 1914, term of the District Court of the Territory of Alaska, Fourth Judicial Division, held at the courtroom in the Town of Iditarod, Territory of Alaska, in said Fourth Division, on the 6th day of July, 1914, present the Honorable F. E. FULLER, Judge of the District Court for the Territory of Alaska, Fourth Judicial Division, sitting in equity:

[Title of Cause.]

Order Allowing Appeal [and Fixing Amount of Bond].

On motion of Messrs. McGowan & Clark, A. R. Heilig and John L. McGinn, attorneys for the defendants John A. Jesson, E. R. Peoples, James W. Hill, Ray Brumbaugh, R. C. Wood and John L. McGinn.

IT IS ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Cir-

cuit, from the final decree heretofore filed and entered herein be, and the same hereby is, allowed; and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings herein be forthwith transmitted to said United States Circuit Court of Appeals.

IT IS FURTHER ORDERED that the bond on appeal as to the defendant E. R. Peoples be fixed at the sum of $1800.00 the same to act as a supersedeas bond and also as a bond for costs and damages on appeal; and that as to the defendants Wood and McGinn the bond on appeal be fixed at the sum of $45,000.00 the same to act as a supersedeas bond and also as a bond for costs and damages on appeal; and that as to the other defendants, the cost [1038] bond on appeal be fixed in the sum of $500.00 the same being included in the amount of the bond that is to be given by the said defendants Peoples, Wood and McGinn.

Dated at Iditarod Fourth Judicial Division, Territory of Alaska, this 6th day of July, 1914.

F. E. FULLER,
District Judge.

Entered in Court Journal No. 2, page 26, at Iditarod, Alaska.

Entered in Court Journal No. 13, page 3.

Service of the within and foregoing order allowing appeal acknowledged at Iditarod, Alaska, this—— day of —— 1914 by receipt of a true copy thereof.

O. L. RIDER,
Attorney for Plaintiff.

[Endorsed]: No. 1756 District Court, 4 Division, Territory of Alaska. F. G. Noyes, Receiver, vs. J. A. Jesson et al., Order Allowing Appeal. Filed in the District Court, Territory of Alaska, 4th Div. July 6, 1914. Angus McBride, Clerk. [1039]

[Title of Court and Cause.]

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS: That we, John A. Jesson, E. R. Peoples, James W. Hill, Ray Brumbaugh, R. C. Wood and John L. McGinn, as principals, and Thomas P. Aitken and Henry Riley and J. J. Price, as sureties, are held and firmly bound unto F. G. Noyes, as receiver of the Washington-Alaska Bank, a corporation, the plaintiff herein, in the full sum of forty-five thousand & no/100 ($45,000.00) dollars, to be paid to said F. G. Noyes, as receiver of said Washington-Alaska Bank, a corporation plaintiff, herein, his attorneys, executors, administrators, assigns, successor or successors, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 6th day of July, 1914.

WHEREAS lately at a term of the District Court for the Territory of Alaska, Fourth Division, in a suit pending in said court between F. G. Noyes, receiver of the Washington-Alaska Bank, a corporation organized under the laws of the State of Nevada, as plaintiff, and J. A. Jesson, D. H. Jonas, David

Yarnell, Dan Ryan, [1040] John L. McGinn, R. C. Wood, C. J. Robinson, M. H. McMullen, C. E. Claypool, Robert Sheppard, Hans Stark, John Flygar, John P. Anderson, E. R. Peoples, James W. Hill, Ray Brumbaugh, J. A. Jackson, John A. Clark, J. A. Healey, George Preston, B. R. Dusenbury and L. N. Jesson, as defendants, a decree was rendered against the defendants R. C. Wood, John L. McGinn, Ray Brumbaugh and J. A. Jesson, jointly and severally, for the sum of $33,720.00 and costs; against the defendants J. A. Jesson for the further sum of $13,400.00 and costs; against the defendants J. A. Jesson and James W. Hill, jointly and severally, for the further sum of $1500.00 and costs; against the defendants J. A. Jesson, James W. Hill and E. R. Peoples, jointly and severally, for the further sum of $1000.00 and costs, against the defendants J. A. Jesson, James W. Hill and Ray Brumbaugh, jointly and severally, for the further sum of $1000.00 and costs; against the defendants J. A. Jesson, Ray Brumbaugh and John L. McGinn, jointly and severally, for the further sum of $3,000.00 and costs; and against the defendants J. A. Jesson, John L. McGinn and Ray Brumbaugh, jointly and severally, for the further sum of $1000.00 and costs;

And said defendants J. A. Jesson, E. R. Peoples, James W. Hill, Ray Brumbaugh, R. C. Wood and John L. McGinn, have obtained from said Court an order allowing an appeal to the United States Circuit Court of Appeals to reverse the decree of the aforesaid suit; and a citation, directed to the said plaintiff F. G. Noyes, receiver of the Washington-Alaska

Bank, a corporation, is about to be issued, citing and admonishing him to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit to be holden in San Francisco, California.

AND WHEREAS the above-named defendants Wood and McGinn have obtained an order from said Court that the bond on appeal as to them be fixed in the sum of Forty-five Thousand & No/100 ($45,000.-00) the same to act as a supersedeas bond as to them and also as a bond [1041] for costs and damages on appeal.

Now, the condition of the above obligation is such that if the said Wood and McGinn shall prosecute their said appeal to effect, and shall answer all damages and costs that may be awarded against them if they fail to make their plea good, then this obligation is to be void, otherwise to remain in full force and virtue.

R. C. WOOD,
By JOHN L. McGINN,
JOHN L. McGINN,
Principals.
THOMAS P. AITKEN,
HENRY RILEY,
J. J. PRICE,
Sureties.

United States of America,
Territory of Alaska,—ss.

Thomas P. Aitken and Henry Riley & J. J. Price, whose names are subscribed to the above and foregoing undertaking as sureties, being first duly sworn, each for himself doth depose and say: That he is a

resident of the Territory of Alaska; That he is not an attorney or counselor at law, marshal, clerk of any court, or other officer of any court; That he is worth the sum of Forty-five Thousand & No/100 ($45,000.-00) dollars, over and above all his just debts and liabilities, exclusive of property exempt from execution.

THOMAS P. AITKEN,
HENRY RILEY,
J. J. PRICE.

Subscribed and sworn to before me this 6th day of July, 1914.

[Seal] EDWARD M. STANTON,
A Notary Public for Territory of Alaska.
My commission will expire Jan. 11, 1918.

The sufficiency of the sureties on the foregoing bond approved this 6th day of July, 1914.

F. E. FULLER,
District Judge.

[Endorsed]: No. 1756. District Court, 4 Division, Territory of Alaska, F. G. Noyes, receiver, vs. J. A. Jesson, et al. Bond on Appeal. Filed in the District Court, Territory of Alaska. 4th Div. July 6, 1914. Angus McBride, Clerk. [1042]

[Title of Court and Cause.]

Citation [on Appeal].

United States of America,
Territory of Alaska,—ss.

The President of the United States of America, to F. G. Noyes, receiver of the Washington-Alaska Bank, a Corporation.

You are hereby cited and admonished to appear

and be at the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, within thirty days from the date hereof, pursuant to an order allowing an appeal made and entered in the above-entitled cause in which F. G. Noyes, receiver of the Washington-Alaska Bank, a corporation, is plaintiff and respondent, and J. A. Jesson, D. H. Jonas, David Yarnell, Dan Ryan, John L. McGinn, R. C. Wood, C. J. Robinson, M. H. McMullen, C. E. Claypool, Robert Sheppard, Hans Stark, John Flygar, John P. Anderson, E. R. Peoples, James W. Hill, Ray Brumbaugh, J. A. Jackson, John A. Clark, J. A. Healey, George Preston, B. R. Dusenbury and L. N. Jesson are defendants and said defendants J. A. Jesson, E. R. Peoples, James W. Hill, Ray Brumbaugh, R. C. Wood and John L. McGinn are appellants in said appeal, to show cause, if any there be, why a decree and judgment rendered in said cause in said District Court for the Territory of **[1043]** Alaska, Fourth Division, against the defendants J. A. Jesson, E. R. Peoples, James W. Hill, Ray Brumbaugh, R. C. Wood and John L. McGinn, and each of them, should not be set aside, corrected and reversed, and why speedy justice should not be done to the defendants J. A. Jesson, E. R. Peoples, James W. Hill, Ray Brumbaugh, R. C. Wood and John L. McGinn.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States this 6th day of July, One Thousand

Nine Hundred and Fourteen.

F. E. FULLER,

District Judge in and for the Territory of Alaska, Fourth Judicial Division.

[Seal] Attest: ANGUS McBRIDE,

Clerk.

Service of a copy of the within and foregoing Citation admitted this 6th day of July 1914, at Iditarod, Alaska.

O. L. RIDER,

Attorney for Plaintiff and Respondent. **[1044]**

[Endorsed]: No. 1756. District Court, 4 Division, Territory of Alaska. F. G. Noyes, Receiver, vs. J. A. Jesson et al. Citation. Filed in the District Court, Territory of Alaska, 4th Div. Jul. 6, 1914. Angus McBride, Clerk. By ———, Deputy.

[Title of Court and Cause.]

Order Extending Return Day.

It having been stipulated and agreed by and between the parties hereto through their respective attorneys, that the return day and the time for docketing the appeal and cross appeal in this action may be extended to and including the 1st day of January, 1915, on account of the great distance of Fairbanks, Alaska, from San Francisco, California, and the uncertainty of mail,

NOW, THEREFORE IT IS HEREBY ORDERED that the return day, and the time for docketing said cause be extended to include the first day of January, 1915.

Dated at Iditarod, Alaska, this 6th day of July, 1914.

F. E. FULLER,
District Judge.

Entered in Court Journal No. 2, page 76, at Iditarod, Alaska.

Entered in Court Journal No. 13, page 3.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Jul. 6, 1914. Angus McBride, Clerk. **[1045]**

[Title of Court and Cause.]

Praecipe [to Transcript of Record].

To the Clerk of the Above-entitled Court:

You are hereby directed to make and prepare the record on appeal in the above-entitled cause and have the same in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, by the 1st day of January, 1915; and that, in preparing said transcript, it shall be made up of the following papers:

Amended Complaint;

Motions to strike the Amended Complaint from the files;

Orders denying same;

Motions to strike certain parts and portions of said Amended Complaint;

Orders denying said motions;

Demurrers to the Amended Complaint;

Orders overruling the same;

Answer of the defendants R. C. Wood, John L. McGinn and J. A. Healy.

Plaintiff's demurrer to the first further and separate answer and defense of said answer of defendants Wood, McGinn and Healey;

Order sustaining the same;

Amended Answer of the defendants J. A. Jesson, E. R. Peoples, James W. Hill and Ray Brumbaugh; [1046]

Replies to said Answer;

Findings of Fact and Conclusions of Law;

Judgment and Decree;

Bill of Exceptions;

Order settling Bill of Exceptions;

Assignments of Error;

Petition for Appeal;

Order Allowing Appeal;

Bond on Appeal;

Citation, and admission of service thereon;

Order extending return day and time for docketing said cause;

Stipulation for printing of transcript;

Praecipe for transcript; and

Stipulation as to making up record.

It is further directed that exhibit "B" attached to exhibit 1 of the Amended Complaint may be omitted in the preparation of said transcript.

McGOWAN & CLARK,
A. R. HEILIG,
JOHN L. McGINN,

Attorneys for Defendants Wood, Hill, Peoples, McGinn, Brumbaugh and J. A. Jesson.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Sep. 19, 1914. Angus McBride, Clerk. P. R. Wagner, Deputy. **[1047]**

[Title of Court and Cause.]

[Stipulation re Transcript of Record.]

It is hereby stipulated between the plaintiff and the defendant by and through their respective attorneys, that the transcript of the record on appeal in the above-entitled cause shall be made up of the following papers:

Amended Complaint;

Motions to strike the Amended Complaint from the files;

Orders denying same;

Motions to strike certain parts and portions of said Amended Complaint;

Orders denying said motions;

Demurrers to the Amended Complaint;

Orders overruling the same;

Answer of the defendants R. C. Wood, John L. McGinn, and J. A. Healey;

Plaintiff's motion to strike the first further and separate answer and defense of said answer of defendants Wood, McGinn and Healey;

Order granting the same;

Amended Answer of the defendants J. A. Jesson, E. R. Peoples, James W. Hill and Ray Brumbaugh;

Replies to said Answers;

Findings of Fact and Conclusions of Law, Judgment and Decree;

Bill of Exceptions;
Order Settling Bill of Exceptions;
Assignment of Errors; [1048]
Petition for Appeal;
Order Allowing Appeal;
Bond on Appeal;
Citation, and Admission of service thereon;
Order extending return day and time for docketing said cause;
Stipulation for printing of transcript;
Praecipe for transcript; and
This stipulation as to making up of the record.

It is further stipulated and agreed that Exhibit "B" attached to Exhibit "One" of the Amended Complaint may be omitted in the preparation of said transcript.

Dated at Iditarod, Alaska, this 6th day of July, 1914.

O. L. RIDER,
Attorney for Plaintiff.
McGOWAN & CLARK,
A. R. HEILIG,
JOHN L. McGINN,
Attorneys for Defendants Wood, Hill, Peoples, Brumbaugh, McGinn and J. A. Jesson.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Jul. 6, 1914. Angus McBride, Clerk. [1049]

[Certificate of Clerk U. S. District Court to Transcript of Record.]

In the District Court for the Territory of Alaska, Fourth Division.

No. 1756.

F. G. NOYES, Receiver of the Washington-Alaska Bank, a Corporation,

Plaintiff,

vs.

J. A. JESSON, D. H. JONAS, DAVID YARNELL, DAN RYAN, C. J. ROBINSON, JOHN L. McGINN, R. C. WOOD, M. H. McMULLEN, C. E. CLAYPOOL, ROBERT SHEPPARD, HANS STARK, JOHN FLYGAR, JOHN P. ANDERSON, E. R. PEOPLES, JAMES W. HILL, RAY BRUMBAUGH, J. A. JACKSON, JOHN A. CLARK, J. A. HEALEY, GEORGE PRESTON, B. R. DUSENBURY and L. N. JESSON,

Defendants.

United States of America,
Territory of Alaska,
Fourth Division,—ss.

I, Angus McBride, Clerk of the District Court, Territory of Alaska, Fourth Division, do hereby certify, that the foregoing, consisting of one thousand forty-nine (1049) typewritten pages, numbered from 1 to 1049 inclusive, constitutes a full, true and correct transcript on appeal in cause No. 1756, entitled:

F. G. Noyes, Receiver of the Washington-Alaska Bank, a Corporation, Plaintiff, vs. J. A. Jesson, D. H. Jonas, David Yarnell, Dan Ryan, C. J. Robinson, John L. McGinn, R. C. Wood, M. H. McMullen, C. E. Claypool, Robert Sheppard, Hans Stark, John Flygar, John P. Anderson, E. R. Peoples, James W. Hill, Ray Brumbaugh, J. A. Jackson, John A. Clark, J. A. Healey, George Preston, B. R. Dusenbury and L. N. Jesson, Defendants, wherein F. G. Noyes, as Receiver of the Washington-Alaska Bank, a corporation, is Plaintiff and Appellee, and J. A. Jesson, D. H. Jonas, David Yarnell, Dan Ryan, C. J. Robinson, John L. McGinn, R. C. Wood, M. H. McMullen, C. E. Claypool, Robert Sheppard, Hans Stark, John Flygar, John P. Anderson, E. R. Peoples, James W. Hill, Ray Brumbaugh, J. A. Jackson, John A. **[1050]** Clark, J. A. Healey, George Preston, B. R. Dusenbury, and L. N. Jesson, are Defendants and Appellants, and it was made pursuant to and in accordance with the praecipe of the Defendants and Appellants filed in this action and made a part of this transcript, and by virtue of the citation issued in said cause, and is the return thereof in accordance therewith.

And I do further certify that the original Citation is included in said transcript, and that the index thereof, consisting of pages i to v inclusive, is a correct index of said transcript on appeal; also that the costs of preparing said transcript, and this certificate, amounting to the sum of three hundred and ninety-eight dollars ($398.00), have been paid to me by counsel for defendants and appellants.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said Court, at Fairbanks, Alaska, this 27th day of November, 1914.

[Seal] ANGUS McBRIDE,

Clerk of the District Court, Territory of Alaska, Fourth Division. **[1051]**

[Endorsed]: No. 2528. United States Circuit Court of Appeals for the Ninth Circuit. John A. Jesson, E. R. Peoples, James W. Hill, Ray Brumbaugh, R. C. Wood and John L. McGinn, Appellants, vs. F. G. Noyes, as Receiver of the Washington-Alaska Bank, a Corporation Organized Under the Laws of the State of Nevada, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Territory of Alaska, Fourth Division.

Received December 15, 1914.

F. D. MONCKTON,

Clerk.

Filed December 21, 1914.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Meredith Sawyer,

Deputy Clerk.

[Stipulation re Omission from Transcript of Record, etc.]

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 2528.

JOHN A. JESSON et al.,

Appellants,

vs.

F. G. NOYES, as Receiver of the Washington-Alaska Bank, a Corporation, etc.,

Respondent,

No. 2529.

R. C. WOOD, JOHN L. McGINN and J. A. JESSON,

Appellants,

vs.

F. G. NOYES, as Receiver of the Washington-Alaska Bank, a Corporation, etc.,

Respondent,

IT IS HEREBY STIPULATED by and between the respective parties to the above-entitled actions that an order of Court may be made for a diminution of the record in respect to the Bill of Exceptions contained in case No. 2528, in that the same may be enlarged in the following respects, viz.: That an order may be made directed to the clerk of the District Court for the Territory of Alaska, Fourth Judicial Division, requiring the said clerk to send up to the above-entitled court the following portions of the

Bill of Exceptions inadvertently omitted therefrom, namely:—

1. The opinion of the Judge of the District Court for the Territory of Alaska, Fourth Judicial Division.

2. A stipulation entered into between O. L. Rider, as attorney for the plaintiff below (Respondent in both cases here) and John L. McGinn, one of the attorneys for the defendants below (Appellants in both cases here), to the effect that all depositions presented on the hearing of said case in the court below should be incorporated in and made a part of the record on appeal; said stipulation being now on file in the Clerk's office of said District Court for the Territory of Alaska, Fourth Judicial Division.

3. Deposition of one Dr. Cassells offered and read in evidence by the plaintiff below.

And that such further orders may be made by the Court in the premises as is necessary upon the motion hereafter to be made by the undersigned attorneys for the Appellants in both of said cases.

Dated February 16th, 1915.

JOHN L. McGINN,
METSON, DREW & MACKENZIE,
Attorneys for Appellants.
O. L. RIDER,
Attorney for Respondent.

[Endorsed]: Nos. 2528–2529. United States Circuit Court of Appeals, Ninth Circuit. John A. Jesson et al., Appellants, vs. F. G. Noyes, as Receiver, etc., Respondent, R. C. Wood et al., Appellants, vs.

F. G. Noyes, etc., Respondent. Stipulation. Filed Mar. 8, 1915. F. D. Monckton, Clerk.

At a Stated Term, to wit, the October Term, A. D. 1914, of the United States Circuit Court of Appeals for the Ninth Circuit, Held in the Courtroom Thereof, in the City and County of San Francisco, in the State of California, on Monday, the eighth day of March, in the Year of Our Lord One Thousand Nine Hundred and Fifteen. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable CHARLES E. WOLVERTON, District Judge.

No. 2528.

JOHN A. JESSON et al.,

Appellants,

vs.

F. G. NOYES, as Receiver of the Washington-Alaska Bank, a Corporation, etc.,

Appellee.

No. 2529.

R. C. WOOD, JOHN L. McGINN and J. A. JESSON,

Appellants,

vs.

F. G. NOYES, as Receiver of the Washington-Alaska Bank, a Corporation, etc.,

Appellee.

Order Directing Clerk of Court Below to Send Up to This Court Certified Copy of Certain Papers.

It appearing from the written stipulation entered into between the parties to the above-entitled causes, that certain portions of the Transcript of Record on Appeal, necessary to the hearing of the said causes herein, have been omitted, which stipulation is on file herein, now therefore, upon motion of Mr. R. G. Hudson, of counsel for the appellants, it is ORDERED that the clerk of the District Court for the Territory of Alaska, Fourth Judicial Division, do send up to this Court, at the cost of the appellants, a certified copy of the following papers, to wit:

(1) That portion of the Bill of Exceptions contained in case No. 2528, which has been omitted therefrom, to wit, the deposition of one Dr. W. G. Cassels, offered and read in evidence by the plaintiff below (the appellee in both cases here), the same to be incorporated in said Bill of Exceptions as though it had been originally incorporated therein, at page 238 of the typewritten record, with such preliminary words as may be necessary to show its introduction in evidence upon the trial of said cause.

(2) The Opinion of the Judge of the District Court for the Territory of Alaska, Fourth Division, rendered in said action No. 2529.

(3) A stipulation entered into between O. L. Rider as attorney for the plaintiff below (appellee in both cases here), and John L. McGinn, one of the attorneys for the defendants below (appellants in both cases here), to the effect that all depositions presented on the hearing of said causes in the court be-

low should be incorporated in and made a part of the record on appeal.

[Certified Copy of Opinion of Fuller, D. J.]

In the District Court for the Territory of Alaska, Fourth Judicial Division.

No. 1756.

F. G. NOYES, Receiver of Washington-Alaska Bank, a Corporation,

Plaintiff,

vs.

J. A. JESSON et al.,

Defendants.

OPINION.

This is an action by the receiver of an insolvent bank against the various defendants, charging them with different wrongful and negligent acts and conduct, whereby the bank was injured and its assets wasted so that it became unable to pay its creditors, and asking that an accounting be had and judgments rendered against the defendants for such amounts as may be found due from them respectively.

It is alleged that the Fairbanks Banking Company was organized as a corporation, under the laws of the State of Nevada, on January 21, 1908, and began business at Fairbanks on March 15, 1908, and continued as such until receivers were appointed to take over its assets and wind up its business on January 5, 1911, the name of the corporation, however, having

been changed to that of Washington-Alaska Bank on September 14, 1910. The defendants were officers and directors of the corporation during the time it was carrying on business, and it is by reason of wrongful and negligent acts in their capacity as such officers and directors that the plaintiff seeks to hold them liable in this action.

The corporation was formed for the purpose of taking over the business of the Fairbanks Banking Company, a copartnership consisting of E. T. Barnette, R. C. Wood and James W. Hill, and the first matter charged in the complaint is on account of an over-valuation of the assets of that partnership, and particularly in respect to two items of such assets, namely, certain shares of stock representing four-fifths of the entire capital stock of the Gold Bar Lumber Company, a corporation organized under the laws of the State of Washington, and doing business in that State, which was taken over by the corporation from the partnership at an agreed valuation of $341,949.00, and which it is charged cost such partnership only $248,067.89, and was at the date of the transfer worth less than that sum, the over-valuation thus being in excess of $93,881.11; and of certain notes then past due, worthless and uncollectible, amounting to $53,287.49. A written agreement was executed by the copartnership and the directors of the corporation on March 16, 1909, reciting the terms and conditions of the transfer of the property, and it is charged that the directors in office at that time unlawfully credited the partnership with, and agreed to

pay to said partnership, on December 31, 1909, the sum of $39,642.81, representing interest accruing on the notes transferred to the corporation from December 31, 1907, to March 15, 1908, which item was not included in the written agreement, and it is charged to have been voluntarily given to the partnership, without any consideration therefor. It is next charged that the defendants unlawfully began to diminish the assets and capital stock of the corporation, by surrendering to subscribers stock certificates which had been issued to them, and paying them the amounts of their subscriptions, such surrendering of stock beginning June 30, 1910, and being made at various times until October 25, 1910, the total amount of stock thus cancelled and surrendered amounting to $56,000.00. On September 30, 1909, it is charged, the directors purchased the stock of the Washington-Alaska Bank, a corporation organized under the laws of the State of Washington, and doing business at Fairbanks, paying therefor the sum of Two Hundred & Fifty Thousand Dollars ($250,000.00); that the amount of such stock was only $150,000.00; and that by reason of such purchase more than $100,000.00 of the assets of the bank were lost. It is charged that on May 12, 1909, the directors purchased one-half of the capital stock of the First National Bank for the sum of $62,500.00, and that at the same time the Washington-Alaska Bank purchased the remaining one-half of the stock of the First National Bank for a like sum; and that subsequently, on May 12, 1910, the officers and direc-

tors of the Fairbanks Banking Company sold all the stock of the First National Bank to R. C. Wood and John L. McGinn—that is, the one-half originally purchased, and the other half which it had acquired in the meantime through its purchase of the Washington-Alaska Bank stock—for the sum of $125,000.00, and that by reason thereof the Fairbanks Banking Company sustained a loss of $25,000.00. Another charge is that on April 12, 1910, the Directors of the Fairbanks Banking Company declared a dividend of twenty per cent upon the outstanding capital stock, amounting to $33,720.00, and that on this date the company had no undivided profits or surplus in excess of its liabilities, but, on the contrary, was in an insolvent and failing condition. And finally, it is charged that on October 1, 1910, the officers and directors of the Fairbanks Banking Company caused its business and assets to be consolidated and amalgamated with those of the Washington-Alaska Bank, whose stock it then held, and assumed all the liabilities of the Washington-Alaska Bank, which were greatly in excess of its assets, causing still further injury to the Fairbanks Banking Company.

It is alleged that the Receiver has taken charge of the assets of the company, and so far as possible reduced them to cash and distributed them among the creditors, but that he has been unable, so far, to pay them only fifty per cent of the amounts due them, and that after exhausting all the remaining

assets and applying them upon the corporation's indebtedness, there will still remain a large sum due to the creditors of the bank.

The defendants who have appeared by their answers have denied all misconduct and acts of negligence on their part, and have further set up that after the appointment of a receiver, E. T. Barnette and his wife transferred to the receiver a large amount of property for the purpose of paying all the obligations of the corporation, and that the same was accepted by the receiver, under the order of this Court, in full settlement of any liability on his part; and that inasmuch as he was at all times a director with the answering defendants, and jointly liable with them for any acts of misconduct or negligence, that this transaction operates as a bar to any suit against them; and further, that the receiver has received certain sums of money from the property thus transferred by Barnette and his wife, and that the sums so received exceed the sum for which any answering defendant is liable.

The effect of the transfer of the property of Barnette and his wife to the receiver, to be by him held in trust until November 1, 1914, and to be then available for the payment of any sums remaining then due to the creditors of the corporation, has been heretofore considered upon questions raised by the pleadings, and it has been decided that this did not operate to release any of the defendants, and was not accepted by the receiver in satisfaction of the claims of the corporation or its creditors against any of the defendants, but that such transaction was in effect

an agreement not to sue Barnette prior to the expiration of the trust agreement, and that instead of preventing the receiver from proceeding against these defendants, it rather rendered it necessary for him to take all proper steps to recover whatever possible upon the liabilities of any other person to the corporation or its creditors.

It appears from the evidence that the partnership, the Fairbanks Banking Company, was in an embarrassed condition in December, 1907, and had temporarily closed its doors, and that a committee of its depositors was appointed to examine into its condition; that after such examination, the committee reported that the assets exceeded the liabilities by a considerable amount, and recommended that the bank continue business, but that owing to the peculiar financial conditions then existing, it should issue a certain amount of scrip, to be issued by trustees in whose hands a certain amount of its securities were to be placed, to meet the current demands of its depositors; and that thereupon the partnership banking company resumed business, and such scrip was issued, and was in current use until after the time of the transfer of the partnership business to the corporation; that after the partnership had resumed business, a plan was formed for the incorporation of the Fairbanks Banking Company under the laws of Nevada, to take over the business of the partnership, and that on January 5, 1908, a public meeting was held and arrangements made for subscription to stock, and a committee appointed to examine into the value of the assets of the partnership,

and to report a basis upon which the business should be taken over, two of the members of this committee having been members of the committee of depositors which had in December examined the assets. That committee had made the following report, which seems to have been accepted by the subscribers to the stock of the corporation:

> "That the notes, properties and securities of the Fairbanks Banking Company, the old institution, examined by its present acting board of trustees and on which a valuation of $288,000.00, in excess of its total liabilities was placed, be accepted; and
>
> "That all notes, properties and securities which said board of trustees placed in the number 3, or doubtful class, remain the property of the old institution; and
>
> That all interest on existing loans as December 12, 1907, be computed to February 15, 1908, and that the amount of such accrued interest be placed to the credit of the old institution on the books of the new corporation, and that same be payable on or before December 31, 1908; and
>
> That should James W. Hill and R. C. Wood not take the full $44,000.00 in stock in the new corporation the balance of the amount not so taken to be paid to them not later than July 1, 1908; and
>
> That the proposition of Captain E. T. Barnette to leave on deposit with the new corporation the sum of $200,000.00 without interest for one year be accepted, and that it be the under-

standing that such deposit will secure said new corporation against any adverse decision of the Court in the Causten vs. Barnette suit in so far as such decision may decrease the value of the Gold Bar property as accepted by the present board of trustees."

The incorporation papers not having been received by February 15, the taking over of the partnership business by the corporation was delayed until March 12, 1908, when a stockholders' meeting was held in Fairbanks, and by-laws adopted and officers elected, the stock subscription accepted, and the matter of taking over the business of the partnership left to the board of directors then elected. Pursuant to this authority, the directors entered into the agreement of March 10 above referred to. This agreement mentions in detail the assets of the partnership, and fixes a valuation thereon, the total resources as agreed upon by the parties being of the value of $790,940.31, and the liabilities $538,940.31. The members of the partnership agreed to accept stock of the corporation at its par value for the amount of the excess of the assets over the liabilities, at the valuations agreed upon, except that $200,000.00 of such excess is agreed to be due E. T. Barnette, and payable to him in cash, but such sum to remain as a special deposit with the corporation until such time as certain litigation concerning the Gold Bar Stock shall have been determined, and to secure the corporation from any loss on account of such litigation. It seems that some of the notes passed upon by the committees were not turned over to the corporation, and that the amount

of stock issued to the partners were less than was contemplated under the report of the committee of January 5, and less than had been subscribed for by Hill, Wood and Barnette in the subscription list then circulated. On that subscription list Barnette subscribed for 440 shares, Wood 220 shares, and Hill 220 shares; while under the agreement of March 16, 1908, 260 shares were issued to Barnette, 130 shares to Hill, and 130 shares to Wood. Wood was absent from Fairbanks during all of this time, and did not return until about the middle of April, 1908, and it seems that at this time the agreement with the corporation was signed by him, his name having been signed to the stock subscription list on his behalf by Barnette. He testifies that it was distinctly understood between him and the directors at the time he did sign the agreement, that he should have the right to take cash, instead of the par value of the shares subscribed for, on July 1st, and that as evidence of such understanding there was then shown him the report of the committee of January 5th and the minutes of the corporation, wherein this was set forth. Prior to his returning to Fairbanks, he had performed some acts as cashier of the corporation in Seattle, and he continued to act as such cashier until June 30th. On June 29th, he tendered his resignation, and on July 1st was paid $13,000.00, the par value of the stock allotted to him. The certificates for this stock seem never to have been in his possession, but to have remained undetached in the stock-book of the corporation. Whatever may be said of the rights and liabilities of Wood, under the written

agreement of March 16, if this were still an executory agreement, it seems that now, the agreement having been fully executed, in accordance with what was then the understanding of all the parties, and cash, in place of stock, delivered to Wood, the receiver is not now in a position to set aside this executed contract, and to enforce the terms of the written contract, although such written contract varies, in some respects, from the one actually carried out by the parties. It would seem that the same reasoning should apply to the item of $39,000.00, interest accruing from December 31, 1907, to March 15, 1908, upon the paper of the partnership transferred to the corporation, and which was paid to Barnette, Hill and Wood by the corporation on December 31, 1908. The minutes of the meeting on January 5, contemplate that interest accruing from December 31, 1907, to February 15, 1908, should be paid to the partnership; and it was also contemplated at that time that the business of the partnership should be taken over by the corporation on February 15. It was impossible, however, for the actual transfer to be made until March 15, and in view of all of the transactions between the parties, it seems that their intention was that the accruing interest, after December 31, 1907, until such time as an actual transfer of business should be made, should belong to the partnership rather than the corporation.

Whatever subsequent events may have shown to be the actual value of the assets taken over, it has not been shown, by the evidence given in this case, that there was any actual fraud in the determination of

the value placed upon such assets by the directors in March, 1908. The evidence rather shows that such value was placed upon these assets by the stockholders themselves, acting through their committee, and that the resolution of the stockholders of March 12, 1908, authorizing the directors to take over such assets, contemplated only the execution of the formal papers necessary for the transfer, rather than that the directors should exercise their individual judgments in determining the value of such assets. While considerations other than the issuing of stock were paid to the partnership, the whole transaction was essentially one involving the issue of stock of the corporation for property, and the laws of Nevada, under which the corporation was organized, and by which the liability of the defendants must be determined, provides:

> "Any corporation existing under any law of this State may issue stock for labor done, or personal property, or real estate or leases thereof; in the absence of fraud in the transaction, the judgment of the directors as to the value of such labor, property, real estate or leases shall be conclusive."

The directors at that time appear to have been acting in good faith, and to have invested considerable sums of their own money in the stock of the corporation, and subsequently to have left, in addition, considerable sums of money on deposit with the new bank. While it may be that the fact that such a large part of the notes taken over were past due should have shown that such paper was an undesirable asset

for a bank, there is no evidence that the directors at that time did not honestly believe it to be worth the valuation placed upon it; nor has the evidence shown that the valuation placed upon the stock of the Gold Bar Lumber Company was known to be excessive, or that the directors had any good reason to believe that it was excessive. There has been considerable evidence produced concerning the value of this stock at various times, from the time it was purchased by the partnership in 1906 to the present time, but the only evidence that can be really considered as reliable, as showing its market value, is that during the present year it was sold at public sale in Seattle for the sum of $100,000.00. The uncertainty of the evidence concerning its value is clearly apparent from the testimony of the officer of the bank making this purchase, given shortly after the sale was made, to the effect that he then considered it worth $300,000.00. It is apparent from the history of the bank that the investment in this stock was the principal source of trouble throughout its existence, and this not because the stock was necessarily worth less than the valuation at which it was taken over by the corporation, but because it was not a proper asset for a bank to invest its funds in. The total issued stock of the corporation at no time exceeded 2,156 shares, of a par value of $215,600.00, a considerable part of which was not paid for in cash, but by the notes of the subscribers; and at the time it commenced business, on March 15, 1908, there had been subscribed for only 1,502 shares, in addition to those allotted Barnette, Hill and Wood; so that at the time it began

business, with practically a capital of only $150,-200.00 partly paid in, $349,829.00 was invested in a distant State, in an uncertain, risky and speculative business, and not under the immediate control of the directors. In addition it had agreed to pay one person, E. T. Barnette, the sum of $200,000.00, and it was liable to have this large amount called for in cash within a short time. It is evident that the persons who met in January 5, 1908, styled themselves "Representative mining, business and professional men of Fairbanks and vicinity" were either ignorant of the ordinary rules of safe banking, or were recklessly determined to invest their own funds, and the funds of their depositors, not in an ordinary banking business, but in a speculative enterprise in lumber manufacturing and dealing in timber lands. There is no evidence, however, that there was any concealment of this enterprise, nor that the depositors did not know the nature of the transaction; nor that the stockholders of the corporation were not as fully informed in regard to its merits as were the directors. The law, as it existed at that time, did not prohibit a banking corporation from investing its funds in such a way, and the law of Nevada and the articles of incorporation of the company, not only did not prohibit such speculation, but authorized such transactions by the corporation. Neither does the evidence in regard to the purchase of the stock of the Washington-Alaska Bank, in September, 1909, show that the amount paid for it was so much in excess of its actual value that the directors can be held either to have knowingly paid an excessive amount,

or to have, by their negligence, failed to have ascertained the true value. The books of that bank at that time showed deposits of over $1,800,000.00, and gold-dust and actual cash on hand and in banks, subject to immediate call, of about ninety per cent of that amount; that the book value of the stock, as shown by the books of the bank, was over $206,000.00, and that the bank for some time had been earning $50,-000.00 a year. Evidently, a corporation of such earning capacity possessed a franchise and goodwill of considerable value, and even if some of the paper it held was past due, and of more or less doubtful value, the total assets and business of the bank may well have been worth the price paid for the stock by the Fairbanks Banking Company. With proper management an institution in such condition should, under ordinary business conditions, have earned sufficient to have justified the price paid for its stock. It is evident, however, that the Fairbanks Banking Company, by this purchase, did not strengthen its position, but, on the contrary, weakened it by further tying up its assets in unavailable and more or less uncertain property, for while its capital stock had not been increased, it had undertaken to carry on a business more than double that formerly carried on. But it is not for mere mistakes in business judgment that directors of a corporation are to be held liable.

Nor is it apparent from the evidence upon what basis any damages can be claimed against the directors, on account of their transactions with the stock of the First National Bank. This stock was acquired in May, 1909, and at the same time an op-

tion was given to Wood to purchase it at the same price in May, 1910, and it was on this latter date sold to him for this price; so that there was no actual loss from the transaction, except that during this time the funds of the bank were tied up in the stock, and no returns realized therefrom. There was no evidence tending to show that it was an advantage to the Fairbanks Banking Company to have control of the First National Bank during this time, as it thus prevented competition in the purchase of gold-dust. There was no evidence as to the earnings of the First National Bank during the time its stock was carried by the Fairbanks Banking Company, nor any evidence that it was worth more at the time that it was sold than at the time when it was purchased; nor any evidence that the option given at the time of the purchase for a resale was illegal or fraudulently entered into by the directors. The actual consolidation of the business of Fairbanks Banking Company, and the Washington-Alaska Bank, in the fall of 1909, does not seem to have worked any actual damage to the stockholders of the depositors of the Fairbanks Banking Company, whatever may have been the unfortunate results to the depositors of the Washington-Alaska Bank; and as this is an action by the receiver of the former company, it is not one wherein any recovery can be had for losses sustained by the creditors of another corporation.

As stated above, the plaintiff's complaint alleges that soon after the corporation began doing business, it commenced to diminish its capital stock by surrendering a certain part thereof to its stockholders,

and cancelling certain stock subscription and certain shares of stock that had been issued. The evidence showed that, beginning June 30, 1908, with the payment to Wood of $13,000.00 for 130 shares of stock agreed to be issued to him, and ending October 25, 1910, when 100 shares of stock were purchased from John L. McGinn for $6,000.00, shares of stock amounting to $56,000.00 were taken over by the bank. Plaintiff contends that this was in direct violation of the laws of Nevada, under which the corporation held its charter, and that under those laws the directors, at the time any stock was surrendered, are jointly and severally liable for the amount thereof; while the defendants contend that the corporation had a right to purchase its own stock, and that all of the stock thus taken over was retained as treasury stock, and subject to reissue, that some of it was actually resold, and that in no event can the purchase of its own stock by a corporation be held to operate as a reduction of its capital stock, unless there is an express intention to retire such stock and not to reissue it. Section 68 of the Corporation Act of Nevada, under which plaintiff claims the liability of the defendant exists, is as follows:

> "It shall not be lawful for the trustees or directors to make any dividend except from the net profits arising from the business of the corporation; nor to divide, withdraw, nor in any way pay to the stockholders, or any of them, any part of the capital stock of the company; nor to reduce the capital stock, unless in the manner prescribed in this Act, or in accordance with the

provisions of the certificate or articles of incorporation; and in case of any violation of the provisions of this section, the directors or trustees under whose administration the same may have happened, except those who may have caused their dissent thereto to be entered at large on the minutes of the board of directors or Trustees at the time, shall in their individual and private capacities, be jointly and severally liable to the corporation, and the creditors thereof, to the full amount so divided, withdrawn or reduced, or paid out; PROVIDED, that this section shall not be construed to prevent a division and distribution of the capital stock of the company which shall remain, after the payment of all its debts, upon the dissolution of the corporation or the expiration of its charter; PROVIDED, ALSO, that this section shall not prevent the retirement or conversion of either stock or bonds or the distribution of the earnings or accumulations of the corporation as provided for in the articles or certificate of incorporation, original or amended."

The defendants cite numerous authorities to sustain their contentions, and I am satisfied that the weight of authority in the United States is that a corporation, where not prohibited by statute or its charter, may purchase shares of its own stock, and that whether or not such purchase operates as a reduction of the capital stock, depends upon the intention with which it is purchased, and that if it is the intention to reissue the purchased stock, the capital

of the corporation is not necessarily reduced by reason of the stock being held for a time as treasury stock. I am not satisfied, however, that this meets all the prohibitions contained in the statutes of Nevada. The Act not merely prohibits the directors from reducing the capital stock unless in the manner prescribed by law, or in accordance with the provisions of the certificate or articles of incorporation, but it makes it unlawful for them "To divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital stock of the company." The law provides that this section shall not prevent the retirement or conversion of either stock or bonds, or the distribution of the earnings or accumulations of the corporation as provided for in the articles of certificate of incorporation, original or amended; but I find nothing in the articles of incorporation of this company which provides for such retirement or conversion, nor do I think the provision of the articles giving the corporation authority to purchase stock and bonds can be held, as contended by defendants, to authorize it to purchase shares of its own stock and pay for them out of its capital.

The corporation laws of the State of New York contain a provision almost identical with that of the Nevada statute, and in construing this, one of the authorities cited by the defendants uses the following language:

> "Does this section broadly forbid the purchase by the corporation of its shares of stock held by its directors? Clearly not, if the transaction is fair and honest, and in the interest of such cor-

poration, and not of the selling directors, and therefore not offensive to the law under the cases cited. But the directors shall not 'in any way pay to the stockholders, or any of them, any part of the captial of such corporation,' and by the concluding words of the section this is not to 'prevent a corporation from accepting shares of its capital stock in complete or partial settlement of a debt owing to the corporation,' and deemed bad or doubtful. By implication it may forbid the purchase of any property of any description from the stockholders, and the payment therefor from the capital of the corporation; that is, from any fund except the surplus. The prohibition, if it applies to purchases of property, applies no more to a purchase of stock than to any other thing of value. The purchase of the stock of the corporation by the corporation from the stockholders is not prohibited or forbidden, but payment therefor from the capital may be and possibly is."

In re Castle Braid Co., 145 Fed. 232.

The same matter was under consideration in another case, wherein the following language occurs:

"I must say that all such rights appear to me to be quite contrary to a reasonable protection of creditors, unless they are limited to purchases which leave the original capital intact—i. e., purchases from surplus—because they necessarily result in keeping up the appearance of a capital which has been actually depleted. If a corporation has received property into its treasury of

the value of its authorized shares, that is no doubt subject to the vicissitudes of its enterprises, which will be represented by public knowledge of its success or of the value of its shares. If, however, it purchases its own shares, this affects neither the value of the other shares, the success of its enterprises, nor the amount of its apparent share capital. It is merely a method of secret distribution, against the deceit of which its creditors have absolutely no means of protection. The fund which they have the right to rely upon has been surreptitiously taken from them. It seems to me very little relief against the evils which such a right causes to limit it to cases where the corporation is thought to be solvent. It is a strange thing, I think, that there have been cases which permit the practice which seems to me to be inevitable mischievous commercially."

In re Tichenor-Grand Co., 203 Fed. 721.

A similar provision was also contained in the corporation laws of the State of California, and concerning it, in an early case in the Supreme Court of that State, the Court says:

"The policy which dictated that provision is obvious. Persons dealing with corporations do so upon the faith that its property and all its assets of whatever nature, are vested in trustees or managers, to be held by them as a fund which shall be primarily liable for its debts. For although the stockholders, and in some events the trustees, may be individually liable to creditors,

it is the property and capital of the corporation to which creditors chiefly look, and which give it credit in the community. To protect the rights of creditors and to guard against improvident or fraudulent conduct on the part of trustees and stockholders, the Legislature has wisely provided in the section we have quoted, that the capital stock of the company shall remain intact, and shall not be devoted to the stockholders, either in the shape of dividends, payments, or withdrawals; nor by way of a reduction of the capital stock (unless in the manner provided by law) except on a dissolution of the corporation in the method prescribed by law, nor even then, until 'after the payment of all its debts.' Dividends can only be declared from 'the surplus *profits* arising from the business of the corporation,' and it shall not be lawful 'to divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital stock of the company,' except after payment of all its debts, on a dissolution of the corporation. This language leaves no room for construction or doubtful interpretation. It is direct, explicit and unmistakable. But it was not intended to interfere with the plenary power of the trustees over the legitimate business of the corporation. They may manage, control and alienate its property in the regular course of its business, but they can not devote the proceeds, beyond the surplus *profits,* to the stockholders, either directly or in-

directly, until after all its debts are paid."

Martin v. Zellerbach, 38 Cal. 307.

"We do not deem it necessary to inquire whether the plaintiff's debt accrued before or after the attempted execution of the agreement between the two companies. If the agreement was contrary to law, as we hold it to be, it cannot be enforced in equity against any creditor, either prior or subsequent, without notice of the transfer at the time of giving the credit of the corporation. As to all creditors of the company, prior or subsequent, it was simply void; and no reason has been suggested why a creditor who has in no way promoted the void act should be estopped from contesting it."

Martin v. Zellerbach, 38 Cal. 311.

In a case where a stockholder had sold his stock to the corporation, the Supreme Court of Washington says:

"The result was a reduction of the amount of the capital stock funds in the hands of the corporation by the payment of a portion thereof to a stockholder. Such a result is directly contrary to the provisions of Section 4265, 1 Ballinger's Codes & St., which makes it unlawful 'to in any way pay to the stockholders or any of them any part of the capital stock of the company.' It is alleged that creditors held indebtedness against the corporation at the time respondent was paid this money, that the claims are still unpaid, and that the holding of such money by respondent is to their prejudice, since the corporation is now

insolvent. It is not alleged that the company was insolvent at the time the transaction occurred, but we think that is immaterial, since the thing that was unlawfully done reduced the available resources of a now insolvent company, and, if such reduction had not been made, the amount thereof should now be on hand for the benefit of creditors.

In Barto v. Nix, 15 Wash. 563, 46 Pac. 1033, a bank accepted the stock of a stockholder in payment of his indebtedness to the bank. It appears that this was done in order to protect the bank from loss, and that it was the intention to reissue the stock. This court upheld the transaction on the ground that it was a *bona fide* one for the purpose of protecting the corporation from loss. But the stock was reissued to other stockholders, and no reduction of the capital stock resulted from the transaction. The Court observed in that case, at pages 568 and 569, 15 Wash., and page 1034, 46 Pac., that 'it might be conceded that a corporation in this state cannot traffic in its own stock. Such we believe to be the established rule in all the states having a similar statutory provisions. But it does not follow that it may not receive such stock in payment of the indebtedness of one of its stockholders, when such transaction is *bona fide* and for the purpose of protecting the corporation from loss.' "

Tait v. Pigott, 73 Pac. 364; 80 Pac. 172.

The most, therefore, that can be said of the author-

ity of the directors to purchase stock of the corporation is, that while the directors had such right under the charter and the laws of Nevada, they could exercise such right only when the purchase price was paid from net profits or surplus funds of the corporation, and not where any part of its capital stock was used for such purpose. There might be special circumstances where, apparently, this would result, and still the directors would not be liable for any damages, if in view of all the circumstances such a purchase was evidently for the best interests of the corporation. Even where corporations have been absolutely prohibited by statute from purchasing their own stock, it has been considered lawful for them to take their stock in payment of a debt past due, or where it seemed necessary in order to prevent loss to the corporation. Some of the transactions complained of in the complaint seem fairly to come within this rule. The payment made to Wood has already been referred to, and the view expressed that the directors were not liable, on the ground that such stock had not really been issued to him, but that under the original contract between the corporation and the partnership, he was allowed to take cash instead of stock within a certain time. It appears that on November 18, 1908, 10,000 shares of stock belonging to Strandberg Brothers, 1,000 belonging to Emma Strandberg, and 1,000 belonging to B. E. Johnson, a partner of Strandberg Brothers, were taken in part payment of a loan, the bank also receiving at that time from these parties the sum of $4,000.00 in cash, making full payment of the loan.

While this loan was made only a short time before, and the shares of stock mentioned were taken as part security for the loan, it cannot be said from the evidence that such a change had not taken place in the condition of the debtors within that time as to make this transaction for the best interests of the bank, and that the transaction amounted to a taking of stock for a pre-existing debt, rather than, as contended by the plaintiff, that the whole transaction amounted to a purchase of stock by the directors. Undoubtedly, if a loan were made to a stockholder, and some time afterward he found that he was unable to pay the loan, the directors would have been fully justified, under all authorities, in taking his stock in satisfaction of the loan; and the fact that only a few days elapsed between the loaning of the money and the calling of the loan is not sufficient to show bad faith in the directors, nor that they contemplated purchasing the stock at the time the loan was made. A more difficult question is presented by the transaction resulting in the purchase of the stock of McGinn on October 25, 1910. The defendants' answer alleges, and the evidence tended to show, that at this time McGinn was interested in the First National Bank of Fairbanks, and that competition between it and the Fairbanks Banking Company was very keen; that as a stockholder of the Fairbanks Banking Company he demanded the right to inspect its books and papers, and threatened, in case this right was not granted him immediately, to make application to Court for an order permitting him to do so, and also for a receiver; that the directors of the

Fairbanks Banking Company feared that information obtained by such inspection would be used by him in promoting the interests of its rival in business, and that any litigation started would impair public confidence in the bank; and perhaps start a run of its depositors on the bank; and that, acting under this belief, they authorized their cashier to loan a purchaser of the stock sufficient funds to pay for the same; that the cashier purchased the stock in his own name, and gave his note to the bank for the amount thereof, and paid McGinn the sum of $6,000.00 for his 100 shares of stock; and that soon thereafter the cashier, without the knowledge of any of the directors, cancelled his note, and charged the amount thereof to the bank, and that the stock was thereafter held with the other treasury stock of the company. It can scarcely be said that, in view of all these circumstances, the directors were utterly unjustified in purchasing the stock for the bank, if it should be held that the transaction did amount to a purchase by the bank directly, while if the directors really contemplated loaning funds to another for the purchase of the stock, and only authorized such loan, but not a purchaser by the bank itself; and the cashier, being a person in whom they had the right to place confidence, thereafter violated their instructions, and without their knowledge, used the funds of the bank to reimburse himself for the purchase of the stock made, then clearly the directors would not be liable therefor, in the absence of direct knowledge of such transaction. With the exception of these transactions, it seems that the purchases of the

other shares of stock, as charged by the complaint, were made, if not with the direct personal knowledge of the directors, at any rate under such circumstances that knowledge thereof was brought home to them, and they must be held to have ratified the same; also that they were made at times when the corporation had not surplus earnings or profits on hand, but were, in fact, made from the capital stock; that the directors at one time, at all events, had knowledge of such proceedings, is evident from the minutes of their meetings, where, on July 13, 1908, they passed the following resolution:

> "The president submitted a written report in detail, showing the condition of the affairs of the bank as July 11, 1908. The report was examined in detail, and on motion duly made and seconded, it was ordered filed. Under questions of this report, question of refunding to those desirous of giving up their stock in the Fairbanks Banking Company was discussed, and it was the sense of the meeting that any stockholder desirous of giving up the stock be paid for same and stock returned to the treasury of the bank."

While undoubtedly the directors at that time in good faith believed that they had a right to do this, it should not exempt them from liability for the results, if their action was in fact contrary to the provisions of the statute; and the directors in office at that time should be liable for stock surrendered, although they may not have had knowledge of each particular transaction, until some different course of proceeding was adopted by the board; and also

directors in office, when subsequent surrenders were made, under similar conditions, should be liable for the same. It is true that at the time some of the stock was surrendered, the books of the corporation showed a slight surplus of assets over liabilities, but they did not at any time show sufficient to equal the sum of $200,000.00, the amount of capital stock with which the corporation was authorized by its articles to commence business; and I am satisfied that the directors had no right to pay out for the purchase of stock any sums which would reduce the capital below that amount. It appears, moreover, that during all this time the bank was carrying a large amount of paper long past due; and while the directors may in fact have relied upon the statements of the officers of the bank, and the reports made by them as showing the true condition of the bank's affairs, it would seem that reasonable diligence on their part would have revealed that among these assets were many of so doubtful a character as to require their deduction from the assets of the bank. This is particularly true of the note of the Tanana Electric Company, dated December 16, 1907, for the sum of $27,997.38, the maker of which was in the hands of a receiver, and in a hopelessly insolvent condition. And while it was evident that the original incorporators had relied upon some alleged guarantee of this amount by either J. E. Chilberg or the Scandinavian-American Bank of Seattle, it was well known that this guarantee had been repudiated by them, and that any attempt at collection from them would be strenuously resisted. On April 12, 1910, a

dividend of twenty per cent upon the outstanding capital stock of the company was declared, and on April 15 paid to the stockholders, or credited to them in their bank accounts. The transaction appears from the following minutes:

> "Mr. Wood informed the board that the Washington-Alaska Bank had declared a dividend of 33⅓ per cent of its capital stock, amounting to $50,000.00, which would be paid to the Fairbanks Banking Company, owners of the stock.
>
> It was then moved by Wood, seconded by Jesson, that $25,000.00 of this amount be credited to 'Stock Account,' thus reducing the valuation at which this stock is held, and the other $25,000.00 be credited to 'Undivided profits.' (Motion carried.)
>
> Moved by Jesson, seconded by McGinn: That the Fairbanks Banking Company declare a dividend of twenty per cent on its paid-up capital stock, namely, $168,600.00.
>
> (Motion carried.)"

At this time the books of the bank showed the amount of undivided profits to be $7,749.82, before the declaration of the dividend of the Washington-Alaska Bank, and after payment of that dividend, according to the disposal thereof made by the directors, $25,000.00 was added to the amount of undivided profits, making a total of $32,749.82. But included within the assets of the bank was a large amount of overdue paper. $111,243.51 of such paper, past due at that time, still remains unpaid,

including the note of the Tanana Electric Company above referred to; and the stock of the Gold Bar Lumber Company was still carried for the same amount as when taken over by the partnership, more than two years before, although no dividends whatever had been paid thereon, and a large amount of the standing timber upon the lands of that company had been cut, turned into lumber and sold, and the proceeds either used up in expenses or in maintaining and enlarging the equipment of the plant. The evidence as to the actual value of the assets of the corporation at this time is scarcely sufficient to form a basis of an accurate calculation. The testimony, however, does show that the value of the Gold Bar stock was less than it was in 1907 or 1908, and that there was still less reason for believing that anything could be realized from the note of the Tanana Electric Company. Undoubtedly some of the notes then past due, and which never have been paid, may have been reasonably supposed to have been of value at that time, and there is no doubt that the subsequent failure of the bank so upset financial conditions, and interfered with business in this vicinity, that on account of the failure alone many debtors were unable to meet their obligations, who would have done so had the bank continued in business. But the conclusion seems irresistible that even if the bank was not actually insolvent, at any rate its capital was seriously impaired on this date, and that any distribution of its assets in the way of a dividend by the directors was unjustifiable. Even upon the face of the books as the accounts were

therein carried, the dividend declared and paid exceeded the amount of undivided profits, and was greater than would have been justified under the law, had all the assets been worth the full value at which they were carried on the books. Besides in making any dividend at this time the directors were acting directly contrary to the express by-laws of their corporation, one of which, defining their powers, is as follows:—

> "To declare dividends semi-annually out of the net profits of the corporation earned up to the 30th day of June of each year, and from the 30th day of June to the 31st day of December of each year, said dividends to be declared by the board of directors at the first regular meeting held subsequent to the 30th day of June and the 31st day of December of each year; PROVIDED, HOWEVER, that no dividend shall be declared or paid that tends to curtail the effective operations of the business of the corporation."

It is apparent that the action of the board in declaring a dividend at this time was not in accordance with this provision of the by-laws, in that it was not made at the time authorized, and that there was no such amount of net profits at the end of the preceding half year, ending December 31, 1909, as to justify such a dividend. It may be that the proviso, "That no dividend shall be declared or paid that tends to curtail the effective operations of the business of the corporation" referred to matters to be determined exclusively by the board of directors, and that they,

by their action, having expressed their opinion that the declaration of a dividend at that time would not curtail the operation of the business of the corporation, the Court may not, because it is of a different opinion, hold that the dividend was illegally declared; but whether this is so or not, it is certainly proper to consider all of the conditions surrounding the business of the bank in determining whether or not the dividend was improperly declared. Defendants have cited numerous authorities to the effect that although a dividend was illegal, creditors cannot complain thereof, where the only result was to reduce the capital stock of the corporation, but not to render the corporation insolvent, and that the thery that the capital and assets of a corporation constitute a trust fund, to be held and managed by the directors for the benefit of the creditors and stockholders, applies only in cases where there is actual insolvency; and that up to the time that actual insolvency occurs, the doctrine of a trust fund does not operate. While this seems to be the rule laid down by the Supreme Court of the United States, and by several other Federal Courts, yet, in the leading cases cited by the defendants, wherein it was held that stockholders were not liable for dividends received from a National Bank when the capital was impaired thereby, but the bank at the time was not actually insolvent, it is implied that the directors who declared the dividend would be held to a different liability, and may be held to answer for any illegal act in this respect (McDonald v. Williams, 174 U. S. 397); and the particular provisions

of the Nevada Statute above quoted seem to determine exactly what this liability is. If this view is correct, the directors who declared this dividend are liable to the receiver for the amount thereof. The directors who were present at that meeting were Barnette, Wood, McGinn, Brumbaugh, Jesson, Jackson and Yarnell; and of these, Wood, McGinn, Brumbaugh and Jesson are defendants in this action.

There is one other charge in the complaint upon which it is sought to hold some of the defendants liable, namely: that they allowed Barnette to withdraw the special deposit of $200,000.00 and thus prefer himself over the other creditors of the bank. It seems, however, that he was entitled to this amount, under the terms of the agreement entered into between the partnership and the corporation, and whether or not that agreement was a proper one, it was entered into long prior to the time that any of the directors holding office at the time of the withdrawal were elected, with the exception of Jesson. There has been no reason shown why subsequent directors should have questioned the legality of this contract, or have made investigation concerning it, and they undoubtedly were entitled to rely upon conditions as they existed at the time they took office, without inquiring into the acts of their predecessors. As a matter of fact, the deposit was left with the corporation much longer than was contemplated by the original agreement, and the directors in office at the time it was withdrawn do not seem to have been negligent in permitting its withdrawal.

Findings of fact and conclusions of law and a de-

cree may be prepared in accordance with these views, finding against the defendants in office at the time the dividend was declared, for the amount thereof, and also against those in office at the time of the purchase of stock, for the amounts found to have been improperly taken over by the corporation. The aggregate of these is $21,000.00, and it appears that the defendant Jesson was in office during all this time, and therefore is liable for this amount. The defendants are thus liable as follows:

For stock taken from March to September 12, 1908, Jesson for $13,400.00;

For stock taken from September 12 to October 13, 1908, Jesson and Hill for $1500.00;

For stock taken October 13, 1908, to March 13, 1909, Jesson, Hill and Peoples for $1100.00;

For stock taken from March 13, 1909, to September 12, 1909, Jesson, Hill and Brumbaugh for $1000.00;

For stock taken from September 12, 1909, to October 12, 1909, Jesson, Brumbaugh and McGinn, $3000; and

For stock taken thereafter, Jesson, McGinn, Brumbaugh and Wood for $1000.00.

Filed:

FULLER, D. J.

[Endorsed]: No. 1756. In the District Court for the Territory of Alaska, Fourth Division. F. G. Noyes, Receiver of Washington-Alaska Bank, a Corporation, Plaintiff, vs. J. A. Jesson et al., Defendants. Opinion. Filed in the District Court, Terri-

tory of Alaska, 4th Div. Jun. 3, 1914. Angus McBride, Clerk.

In the District Court for the District of Alaska, Division No. 4, at Fairbanks.

United States of America,
District of Alaska,
Division No. 4,—ss.

CERTIFICATE.

I, J. E. Clark, Clerk of the District Court for the District of Alaska, Division No. 4, hereby certify that the foregoing and hereto attached twenty-five pages of typewritten matter, numbered from 1 to 25, both inclusive, constitute a full, true, and complete copy, and the whole thereof, of the original Opinion in cause No. 1756, entitled:—F. G. Noyes, Receiver of Washington-Alaska Bank, a corporation, Plaintiff, vs. J. A. Jesson, D. H. Jonas, David Yarnell, Dan Ryan, C. J. Robinson, John L. McGinn, R. C. Wood, M. H. McMullen, C. E. Claypool, Robert Sheppard, Hans Stark, John Flygar, John P. Anderson, E. R. Peoples, James W. Hill, Ray Brumbaugh, J. A. Jackson, John A. Clark, J. A. Healey, George Preston, B. R. Dusenbury and L. N. Jesson, Defendants, as the same appears on file in my office.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the above-entitled Court this thirtieth day of April, 1915.

J. E. CLARK,
Clerk.
By Sidney Stewart,
Deputy.

[Endorsed]: No. 1756. In the District Court for the Territory of Alaska, Fourth Division. F. G. Noyes, Receiver of Washington-Alaska Bank, Plaintiff, vs. J. A. Jesson et al., Defendants. Certified Copy of Opinion.

[Endorsed]: No. 2528. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jun. 3, 1915. F. D. Monckton, Clerk.

[Certified Copy of Stipulation as to Preparation of Transcript on Appeal.]

In the District Court for the Territory of Alaska, Fourth Judicial Division.

No. 1756.

F. G. NOYES, Receiver, etc.,

Plaintiff,

vs.

J. A. JESSON et al.,

Defendants.

It is hereby stipulated and agreed by and between the plaintiff and defendant and their respective attorneys that the Clerk of the above-entitled court, in the preparation of the transcript on appeal, may correct all clerical errors;

And it is further stipulated and agreed that the Clerk of the above-entitled court shall insert in their proper places copies of the exhibits given and offered upon the trial of the above-entitled cause, as specified by the attorneys, and now in the possession of said clerk, as it appears from the Bill of Ex-

ceptions that said exhibits were introduced in evidence; and that the depositions introduced upon the trial of the above-entitled cause, upon the return of this Court to Fairbanks, Alaska, together with the exhibits attached thereto, shall be inserted in the said Bill of Exceptions and made a part thereof in the places where it is shown in said Bill of Exceptions said depositions were read in evidence.

And it is further agreed between the parties, that in the preparation of the transcript on appeal, that all mention of the Court taking recesses and an adjournment from day to day, may be omitted there from.

Dated at Iditarod, Alaska, this 6th day of July, 1914.

O. L. RIDER,
Attorney for Plaintiff.
McGOWAN & CLARK,
A. R. HEILIG,
JOHN L. McGINN,
Attorneys for Defendants Wood, Hill, Peoples, Brumbaugh, McGinn & J. A. Jesson.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Jul. 6, 1914. Angus McBride, Clerk.

In the District Court for the District of Alaska, Division No. 4, at Fairbanks.

United States of America,
District of Alaska,
Division No. 4,—ss.

CERTIFICATE.

I, J. E. Clark, Clerk of the District Court of the District of Alaska, Division No. 4, hereby certify that the foregoing and hereto attached two pages of typewritten matter, numbered from 1 to 2, both inclusive, constitute a full, true, and complete copy, and the whole thereof, of the original Stipulation as to Preparation of Transcript on Appeal, in cause No. 1756, entitled: F. G. Noyes, Receiver, etc., Plaintiff, vs. J. A. Jesson et al., Defendants, as the same appears on file and of record in my office.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the above-entitled Court this fourth day of May, 1915.

[Seal] J. E. CLARK,
Clerk.
By Sidney Stewart,
Deputy.

[Endorsed]: No. 1756. In the District Court, for the Territory of Alaska, Fourth Division. F. G. Noyes, Receiver, etc., Plaintiff, vs. J. A. Jesson et al., Defendants. Certified Copy of Stipulation as to Preparation of Transcript on Appeal.

[Endorsed] No. 2528. United States Circuit Court of Appeals, for the Ninth Circuit. Filed Jun. 3, 1915. F. D. Monckton, Clerk.